Supreme Court, U. S.
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APPENDIX

IN THE

Supreme Court of the United States

OCTOBER TERM, 1977

No. 77-747

WALTER J. FLECK ET AL.,

Appellants,

vs.

WARREN SPANNAUS ET AL.,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA

DOCKETED NOVEMBER 25, 1977
PROBABLE JURISDICTION NOTED JANUARY 23, 1978

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

Judge Will
No. 74C 3532
THREE JUDGE COURT REQUESTED

WALTER J. FLECK, EDYTHE A. HAMLER, E. A. RICHERT, as Fiduciary of the Allied Structural Steel Company Salaried Employees' Pension Plan, and ALLIED STRUCTURAL STEEL COMPANY, a Delaware corporation,

Plaintiffs,

vs.

WARREN SPANNAUS, E. I. MALONE, PHYLLIS SPEILMAN and ALLIED STRUCTURAL STEEL COMPANY SALARIED EMPLOYEES' PENSION PLAN,

Defendants.

COMPLAINT

Now come WALTER J. FLECK, EDYTHE A. HAMLER, E. A. RICHERT, as Fiduciary of the Allied Structural Steel Company Salaried Employees' Pension Plan, and ALLIED STRUCTURAL STEEL COMPANY, a Delaware corporation, by their attorneys, MAURICE J. McCARTHY and DENNIS J. CARLIN, and complain of WARREN SPANNAUS, E. I. MALONE, PHYLLIS SPEILMAN and ALLIED STRUCTURAL STEEL COMPANY SALARIED EMPLOYEES' PENSION PLAN as follows:

COUNT I

1. Plaintiff Walter J. Fleck is a citizen and resident of the State of Illinois.

2. Plaintiff Fleck is informed and believes and so states as follows. Warren Spannaus is a citizen and resident of the State of Minnesota and is the Attorney General of said State. E. I. Malone is a citizen and resident of the State of Minnesota and is the Commissioner of the Department of Labor and Industry of said state. Phyllis Speilman is a citizen and resident of the State of Minnesota and is the Administrator of the Private Pension Benefits Protection Act of said State. Allied Structural Steel Company Salaried Employees' Pension Plan (hereinafter the "Pension Plan") is an entity which was organized on August 7, 1963 and which has existed continuously since that date. Said Pension Plan is administered in the State of Illinois within the boundaries of the United States District Court, Northern District, Eastern Division. Said Pension Plan uses as its depository the Northern Trust Company, a state bank in Chicago, Illinois, which is also the Pension Plan Trustee.

3. The jurisdiction of this Court is invoked pursuant to the provisions of Section 502 of the Employee Retirement Income Security Act of 1974 (hereinafter referred to as "ERISA"), Title 29 United States Code, Section 1132.

4. Plaintiff Walter J. Fleck was employed on a salaried basis by Allied Structural Steel Company (hereinafter referred to as "Allied") in July 1942 and has been employed continuously since that time. He has now attained the age of 50 years.

5. Allied is in the business of fabricating and erecting structural steel, both for intrastate and for interstate commerce. On or about August 7, 1963 Allied instituted a Pension Plan for the benefit of its salaried employees. That Plan is a qualified plan, under Section 401 of the Internal Revenue Code of 1954 and the regulations pertaining thereto.

6. Under the provisions of the Pension Plan, a salaried employee is entitled to full vesting and may elect early retirement if he is less than 55 years of age, after 25 or more years of continuous service, provided the sum of his age and years of continuous service equals 80 years. There are certain circumstances under which the age and service requirements may be varied. Attached as Exhibit "A" is a copy of the relevant Article of the Pension Plan. Treasury Regulation 1.401-6(b)(2) promulgated by the Internal Revenue Service provides additional "vesting" provisions in the event that there is either a partial or complete termination of the Plan by the plan sponsor. The aforesaid Internal Revenue Service Regulation provides for vesting "to the extent then funded".

7. Plaintiff Fleck, since he has been employed by Allied for thirty-two (32) years and has attained the age of fifty (50) years, is entitled under the terms of the Pension Plan to a "fully vested" interest therein and may elect early retirement. Plaintiff Fleck has not taken retirement, and thereby continues to be a participant and potentially entitled to the benefits of the Pension Plan.

8. For many years Allied has maintained a division office within the State of Minnesota. That office is engaged in the erection of steel structures, such as bridges, in 30 states as well as in the State of Minnesota. Allied has commenced the termination of that division office in Minnesota and accordingly on July 31, 1974, discharged eleven (11) employees of its thirty (30) total salaried employees in Minnesota. Two employees have terminated employment in the interim, and Seventeen (17) salaried employees in Minnesota remain in the employ of Allied, subject to the provisions of the Pension Plan, the provisions of ERISA and the provisions of the In-

ternal Revenue Code and Regulations which relate to said Pension Plan.

Some of the persons who were originally hired for the Minnesota office did work principally within the territorial limits of Minnesota. Most of the salaried employees, however, performed their duties either completely or substantially completely outside of Minnesota, even though they may have originally been hired by the Minnesota office. On several occasions salaried employees who had been hired by the Minnesota office and salaried employees from other Allied offices worked side-by-side at steel erection projects outside of Minnesota.

9. On September 2, 1974 Public Law 93-406 (ERISA) was enacted. That law is a Statute of the United States which provides a mandatory plan of termination insurance guaranteeing the payment of a substantial portion of an employee's vested pension benefits. Section 4062 of ERISA imposes a liability on the employer for:

"(b) . . . an amount equal to the lesser of—

(1) the excess of—

(A) the current value of the plan's benefits guaranteed under this title on the date of termination over

(B) the current value of the plan's assets allocable to such benefits on the date of termination, or

(2) 30 percent of the net worth of the employer determined as of a day, chosen by the corporation but not more than 120 days prior to the date of termination, computed without regard to any liability under this section." Title 29 United States Code, Section 1362(b).

10. ERISA provides equal treatment for all employees regardless of their state of residence or employment. The State of Minnesota, however, has enacted a law (the "Private Pension Benefits Protection Act", hereinafter referred to as "Minnesota Act") relating only to employees who are "employed at" a "place of employment" within the State of Minnesota. Attached as Exhibit "B" is a copy of Section 3, Section 4, Section 5, Section 6, Section 11 and Section 12, Chapter 437 of the Minnesota Statutes. There is no definition in the Act of the term "employed at the place of employment" within the State of Minnesota. In essence, that Statute provides that a terminated employee, employed at a place of employment in Minnesota, who has been an employee for ten years prior to termination is entitled to a pension based upon the present value of the pension he would have been entitled to receive at his normal retirement date had he been fully vested in said benefit on date of termination of employment. There is no "age" requirement for vesting, nor is there any limitation based on either the "funded amount" or on the "net worth" of the employer. The Minnesota Act is vague, indefinite and uncertain, especially in the following particular. It is impossible to determine whether the Minnesota Act is intended to bestow benefits only upon Minnesota residents, or upon persons physically performing work within Minnesota (wherever they reside), or upon persons who were hired by or are carried on the payroll of a Minnesota office and perform services in other states. It is conceivable that the Minnesota Act may, by its terms, apply to an employee who has never set foot in the State of Minnesota. To Plaintiff's knowledge, no regulations, rulings or judicial interpretations have been rendered as to the Minnesota Act.

11. By the operation of the said Minnesota Act, former "Minnesota employees" of Allied are given a fully "vested" and fully "funded" benefit without regard to their ages, after only ten (10) years of service. To the extent that any such employee receives funds from the Pension Plan, to pay any part of that benefit, that Plan will be diminished and the interest of Plaintiff Fleck will be adversely affected. To the extent that any such employee receives funds from Allied, to pay any part of that benefit, Allied's ability to continue to contribute to the Pension Plan will be impaired, and the interest of Plaintiff Fleck will be adversely affected.

12. This Court could construe the Minnesota Act to mean that the entire "pension funding charge" (as defined in the Minnesota Act) is to be paid by the employer from its assets, without recourse to the Pension Plan, when the terminated Minnesota employee is not entitled to a "vested share" under the Pension Plan. In that eventuality, the ability of Allied to make future contributions to the Pension Plan will be greatly impaired, if not destroyed. Plaintiff Fleck would thus be deprived of the benefits to which he is or will be entitled under the Pension Plan. Further, if the result of the Minnesota Act is to force Allied out of business, Plaintiff Fleck would have no lien upon the assets of Allied. Thus, the Minnesota Act attempts to bestow a benefit upon employees who are "employed at" a "place of employment" within the State of Minnesota to the direct or indirect detriment of other employees.

13. The Minnesota Act is invalid and unenforceable for each and all of the following reasons:

(a) The Federal Statute (ERISA) has preempted the field.

(b) The Minnesota Act is an unreasonable regulation of Interstate Commerce in violation of Article I, Section 8 of the Constitution of the United States.

(c) The Minnesota Act impairs the obligations of an existing contract between Plaintiff Fleck and Defendant Pension Plan, in violation of Article I, Section 10 of the Constitution of the United States.

(d) The Minnesota Act deprives Plaintiff Fleck of his property without due process of law in violation of Amendment XIV, Section 1 of the Constitution of the United States.

(e) The Minnesota Act is substantially unfair to the participants and beneficiaries of the Pension Plan who are not covered by said Act.

(f) The Minnesota Act contains the following provision:

> "Sec. 17 Effective date; effect of federal act in area Sections 181b.01 to 181b.17 shall take effect the day following final passage. Provided that Sections 181B.01 to 181B.17 shall become null and void upon the institution of a mandatory plan of termination insurance guaranteeing the payment of a substantial portion of an employee's vested pension benefits pursuant to any law of the United States."

Upon the enactment of ERISA the Minnesota Act became null and void by its own terms.

14. Plaintiff Fleck is informed and believes and states as follows. Defendants Speilman, Malone and Spannaus have threatened to enforce the Minnesota Statute against the Pension Plan and against the assets of Allied. Any such action would be taken by the aforesaid Defendants as individuals, not as agents of the State of Minnesota, because of the invalidity of the Minnesota Statute.

WHEREFORE, Walter J. Fleck prays this Court for the following relief:

(a) A clarification of his rights to future benefits under the terms of the Allied Structural Steel Company Salaried Employees' Pension Plan;

(b) A temporary injunction during the pendency of this suit and a permanent injunction against Warren Spannaus, E. I. Malone, Phyllis Speilman and Allied Structural Steel Company Salaried Employees' Pension Plan from enforcing, attempting to enforce, or threatening to enforce the Private Pension Benefits Protection Act of the State of Minnesota;

(c) The convening of a three-judge court pursuant to Title 29 United States Code, Section 2284;

(d) An award of attorney's fees and court costs;

(e) Such other relief as justice may require.

COUNT II

1. Plaintiff Edythe A. Hamler is a citizen and resident of the State of Indiana.

2-3. As and for paragraphs 2 and 3 of this Count, Plaintiff Hamler incorporates by reference and realleges paragraphs 2 and 3 of Count I.

4. Plaintiff Hamler was employed on a salaried basis by Allied in February, 1963 and has been so employed continuously since that time.

5-6. As and for paragraphs 5 and 6 of this Count, Plaintiff Hamler incorporates by reference and realleges paragraphs 5 and 6 of Count I.

7. Plaintiff Hamler has been employed by Allied for more than eleven (11) years. She is not entitled to seek early retirement under the Pension Plan, but is presently a participant thereof.

8-14. As and for paragraphs 8 through 14 inclusive of this Count, Plaintiff Hamler incorporates by reference and realleges paragraphs 8 through 14 inclusive of Count I.

WHEREFORE, Edythe A. Hamler prays this Court for the following relief:

(a) A clarification of her rights to future benefits under the terms of the Allied Structural Steel Company Salaried Employees' Pension Plan;

(b) A declaration by this Court that the Private Pension Benefits Protection Act of Minnesota is void on the basis of vagueness, indefiniteness and uncertainty, or, in the alternative, that said Minnesota Act is invalid and unenforceable for the reasons stated above in paragraphs 13(a) through 13(e) inclusive.

(c) A temporary injunction during the pendency of this suit and a permanent injunction against Warren Spannaus, E. I. Malone, Phyllis Speilman and Allied Structural Steel Company Salaried Employees' Pension Plan from enforcing, attempting to enforce, or threatening to enforce the Private Pension Benefits Protection Act of the State of Minnesota;

(d) The convening of a three-judge court pursuant to Title 28 United States Code, Section 2284;

(e) An award of attorneys' fees and court costs;

(f) Such other relief as justice may require.

COUNT III

1. E. A. Richert is a citizen and resident of the State of Illinois. He is presently acting as Fiduciary of the Allied Structural Steel Company Salaried Employees' Pension Plan.

2-10. As and for paragraphs 2 through 10 inclusive of this Count, Plaintiff Richert incorporates by reference and realleges paragraphs 2 through 10 inclusive of Count I.

11. The Minnesota Act may require the application of the property of the Pension Plan to make payments to persons who are not entitled to such payments under the terms of said Pension Plan. There are many persons presently receiving payments from the Pension Plan. There are also several persons who are presently entitled to take retirement and receive payments from the Pension Plan (such as Walter J. Fleck). If Plaintiff Richert is required to make any payments to such of the thirteen (13) terminated Minnesota employees who may claim an interest under the Minnesota Act, then there will and must be a substantial diminution in the amounts available for the aforesaid beneficiaries and participants.

12. Plaintiff Richert is informed and believes and so states, that on September 12, 1974 Allied filed with the Secretary of the United States Department of Labor a protective claim for plan termination benefits under Sec. 4082(b) of ERISA in the event that a determination is made that a partial termination under the Internal Revenue Code of 1954 or under ERISA has taken place. Under the provisions of Sec. 4082(b) aforesaid, the filing of a timely claim renders applicable the mandatory insurance provisions to plans "terminated" after June 30, 1974 and before September 2, 1974, the date of enactment of ERISA. This provision extends retroactive coverage to June 30, 1974. No determination has been made on the aforesaid claim at the date of the filing of this Complaint. Pending such a determination, Plaintiff Richert needs the instruction of this Court as to the proper application of the assets of the Pension Plan in order to comply with the provisions of Section 409 of ERISA and to avoid any personal liability thereunder. Attached as Exhibit C is a copy of the claim aforesaid. Attached as Exhibit D is a copy of the receipt of the United States Department of Labor.

13. Section 11 of the Minnesota Act (see Exhibit "B") provides that the assets of the employer (Allied) are subject to a lien in favor of the terminated Minnesota employees. No such lien is provided in favor of continuing employees. Furthermore, the imposition of such a lien will deprive all other beneficiaries and participants of the Pension Plan of the future employer contributions, tax benefits, and eventual pension payments to which they are or may be entitled.

14. Under Section 409 of ERISA (Title 29 United States Code, Section 1109) Plaintiff Richert is a fiduciary who is responsible for the proper use of the assets of the Pension Plan and for the interests of beneficiaries and participants thereof. The use of the assets of the Pension Plan which may be contemplated by the Minnesota Act, together with the reduction in contributions which will result from the imposition of a lien on Allied's assets, is improper and impermissable.

15. The Minnesota Act is invalid for each and all of the following reasons:

(a) The Federal Statute (ERISA) has preempted the field.

(b) The Minnesota Act is an unreasonable regulation of Interstate Commerce in violation of Article I, Section 8 of the Constitution of the United States.

(c) The Minnesota Act impairs the obligations of an existing contract between Plaintiff Richert as Fiduciary of the Pension Plan and the salaried employees of Allied, in violation of Article I, Section 10 of the Constitution of the United States.

(d) The Minnesota Act deprives Plaintiff Richert as Fiduciary of the Pension Plan of property of the Pension Plan without due process of law in violation of Amendment XIV, Section 1 of the Constitution of the United States.

(e) The Minnesota Act contains the following provision:

"Sec. 17 Effective date; effect of federal act in area Sections 181B.01 to 181B.17 shall take effect the day following final passage. Provided that sections 181B.01 to 181B.17 shall become null and void upon the institution of a mandatory plan of termination insurance guaranteeing the payment of a substantial portion of an employee's vested pension benefits pursuant to any law of the United States."

Upon the enactment of ERISA the Minnesota Act became null and void by its own terms.

(f) The Minnesota Act is vague and indefinite and uncertain.

(g) The Minnesota Act is substantially unfair to the participants and beneficiaries of the Pension Plan who are not covered by said Act.

16. Plaintiff Richert is informed and believes and states as follows. Defendants Speilman, Malone and Spannaus have threatened to enforce the Minnesota Act against the Pension Plan and against the assets of Allied. Any such action would be taken by the aforesaid Defendants as individuals, not as agents of the State of Minnesota, because of the invalidity of the Minnesota Statute.

WHEREFORE, E. A. Richert, as Fiduciary of the Allied Structural Steel Company Salaried Employees' Pension Plan, prays this Court for the following relief:

(a) A clarification of the duties and obligations imposed upon him as a fiduciary by ERISA as they relate to the administration of the terms of the Allied Structural Steel Company Salaried Employees' Pension Plan;

(b) A declaration by this Court that the Private Pension Benefits Protection Act of Minnesota is void, invalid and unenforceable for the reasons stated above in paragraphs 15(a) through 15(g) inclusive;

(c) A temporary injunction during the pendency of this suit and a permanent injunction against Warren Spannaus, E. I. Malone, Phyllis Speilman and Allied Structural Steel Company Salaried Employees' Pension Plan from enforcing, attempting to enforce, or threatening to enforce the Private Pension Benefits Protection Act of the State of Minnesota;

(d) The convening of a three-judge court pursuant to Title 28 United States Code, Section 2284;

(e) Relief from the provisions of Section 409 of ERISA for actions taken pursuant to order of this Court;

(f) An award of attorneys' fees and court costs;

(g) Such other relief as justice may require.

COUNT IV

1. Allied Structural Steel Company is a Delaware corporation having its main office and place of business in the State of Indiana.

2-10. As and for paragraphs 2 through 10 inclusive of this Count, Plaintiff Allied incorporates by reference and realleges paragraphs 2 through 10 inclusive of Count I. Jurisdiction of this Court is also invoked under the theory of pendent or ancillary jurisdiction.

11-13. As and for paragraphs 11 through 13 inclusive of this Count, Plaintiff Allied incorporates by reference and realleges paragraphs 11 through 13 inclusive of Count III.

14. The Minnesota Act provides no notice of imposition and no means whereby Allied can obtain a hearing or otherwise defend itself against the imposition of a lien on its assets.

15. The Minnesota Act is a blatant attempt to prefer employees employed at its division office in Minnesota over all

creditors and stockholders of Allied and other similar employers.

16. The Minnesota Act, Section 12, requires an employer to purchase a prepaid deferred annuity for each qualifying terminated employee. Such a requirement is an unreasonable, arbitrary and capricious imposition which will seriously affect Allied's ability to continue in business and may force a complete termination of all operations.

17. The Minnesota Act is invalid for each and all of the following reasons:

(a) The Federal Statute (ERISA) has preempted the field.

(b) The Minnesota Act is an unreasonable regulation of Interstate Commerce in violation of Article I, Section 8 of the Constitution of the United States.

(c) The Minnesota Act impairs the obligations of an existing contract between Plaintiff Allied and its employees, in violation of Article I, Section 10 of the Constitution of the United States.

(d) The Minnesota Act deprives Plaintiff Allied of its property without due process of law in violation of Amendment XIV, Section 1 of the Constitution of the United States.

(e) The Minnesota Act contains the following provision:

> "Sec. 17 Effective date; effect of federal act in area Sections 181B.01 to 181B.17 shall take effect the day following final passage. Provided that sections 181B.01 to 181B.17 shall become null and void upon the institution of a mandatory plan of termination insurance guaranteeing the payment of a substantial portion of an employee's vested pension benefits pursuant to any law of the United States."

Upon the enactment of ERISA the Minnesota Act became null and void by its own terms.

(f) The Minnesota Act is vague and indefinite and uncertain.

(g) The Minnesota Act is substantially unfair to the participants and beneficiaries of the Pension Plan who are not covered by said Act.

(h) The Minnesota Act fails to provide notice to the person against whose assets a lien is to be imposed.

(i) The Minnesota Act fails to provide a hearing and an opportunity to defend against the imposition of a lien upon an employer's assets.

(j) The Minnesota Act does not apply to all employers, but only to those employers who have established a pension plan. Such a classification is unreasonable, arbitrary and invidious. The Minnesota Statute thereby violates Amendment XIV, Section 1 of the Constitution of the United States.

18. Plaintiff Allied is informed and believes and states as follows. Defendants Speilman, Malone and Spannaus have threatened to enforce the Minnesota Statute against the Pension Plan and against the assets of Allied. Any such action would be taken by the aforesaid Defendants as individuals, not as agents of the State of Minnesota, because of the invalidity of the Minnesota Act.

WHEREFORE, Plaintiff Allied Structural Steel Company, a Delaware corporation, prays this Court for the following relief:

(a) A clarification of the obligations under the terms of the Allied Structural Steel Company Salaried Employees' Pension Plan, ERISA, and the Internal Revenue Code of 1954 and Regulations;

(b) A declaration by this Court that the Private Pension Benefits Protection Act of Minnesota is void, invalid and unenforceable for the reasons stated above in paragraphs 17(a) through 17(j) inclusive.

(c) A temporary injunction during the pendency of this suit and a permanent injunction against Warren Spannaus, E. I. Malone, Phyllis Speilman and Allied Structural Steel Company Salaried Employees' Pension Plan from enforcing, attempting to enforce, or threatening to enforce the Private Pension Benefits Protection Act of the State of Minnesota;

(d) The convening of a three-judge court pursuant to Title 28 United States Code, Section 2284;

(e) An amount of attorneys' fees and court costs;

(f) Such other relief as justice may require.

WALTER J. FLECK, EDYTHE A. HAMLER, E. A. RICHERT, as Fiduciary of the Allied Structural Steel Company Salaried Employees' Pension Plan, and ALLIED STRUCTURAL STEEL COMPANY, a Delaware corporation.

By: Maurice J. McCarthy
Dennis J. Carlin

208 South LaSalle Street
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263-4040 (312)
Of Counsel: Ettelson, O'Hagan,
Ehrlich & Frankel

[Affidavit of service omitted in printing]

EXHIBIT "A"

SECTION 3. ELIGIBILITY OF EMPLOYEES FOR PENSIONS.

1. After the effective date of this Plan, employees on retirement will be eligible for pensions as follows:

(1) An employee who retires on or after his normal retirement date will be entitled to a regular pension as provided in Section 5 of this Plan.

(2) An employee suffering from a total and permanent disability, as defined in Section 1 hereof, who on retirement has fifteen (15) years of continuous service, will be entitled to the following pensions:

(a) On retirement prior to his normal retirement date, the greater of:

(1) $100 per month, or

(2) A pension computed under Section 5 of this Plan but based on continuous service and average monthly earnings to date of retirement, whichever is greater.

(b) On attainment of his normal retirement date, a pension computed under sub-subparagraph (a)(2) of this paragraph.

(3) An employee who retires prior to his normal retirement date shall be entitled to an early retirement pension under the following conditions:

(a) If he retires after attaining the age of sixty (60) years, at his option, after fifteen (15) years of continuous service; or

(b) If he retires after having attained the age of fifty-five (55) years or older, after twenty (20) years of continuous service, or such other lesser number of years of continuous service which, added to his age equals the sum of seventy-five (75) years; or

(c) If he retires prior to the time he attains the age of fifty-five (55) years, after twenty-five (25) or more years of continuous service, provided that the sum of his age and years of continuous service equals eighty (80) years.

(e) If any employee becomes eligible for an early retirement pension under any subparagraph of this Section and after a break in continuous service again enters the employ of an employer, his right to such pension is vested and if, after the termination of such second period of his employment, his continuous service thereunder does not qualify him for a pension under any of the provisions of this Section because of the length of his continuous service prior to the second break in continuous service, he shall remain eligible for the pension to which he would have been entitled had he not resumed employment, and his retirement shall be presumed to commence after the time of his first break in continuous service.

(4) An employee eligible to receive an early retirement pension as provided in subparagraph (3) of paragraph 1 of this Section will be entitled, on retirement, to receive either of the following pensions he elects:

(a) A regular pension commencing at the time he attains the age of sixty-five (65); or

(b) A reduced early retirement pension at the time of retirement based on the regular pension to which he would have been entitled, reduced to its equivalent actuarial value at such time.

EXHIBIT "B"

Sec. 3 Pension refunding charge, vested benefits prior to pension benefits protection act

Every employer who hereafter ceases to operate a place of employment or a pension plan within this state shall owe to his employees covered by sections 181B.01 to 181B.17 a pension funding charge which shall be equal to the present value of the total amount of vested pension benefits based upon covered service occurring before April 10, 1974, of such employees of the employer who have completed ten or more years of any covered service under the pension plan of the employer and whose vested pension benefits have been or will be forfeited because of the employer's ceasing to operate a place of employment or a pension plan, less the amount of such vested pension benefits which are compromised or settled to the satisfaction of the commissioner as provided in sections 181B.01 to 181B.17.

Sec. 4 Nonvested benefits prior to act

Every employer who hereafter ceases to operate a place of employment or a pension plan within this state shall owe to his employees covered by sections 181B.01 to 181B.17 a pension funding charge which shall be equal to the present value of the total amount of nonvested pension benefits based upon service occurring before April 10, 1974 of such employees of the employer who have completed ten or more years of any covered service under the pension plan of the employer and whose nonvested pension benefits have been or will be forfeited because of the employer's ceasing to operate a place of employment or a pension plan, less the amount of such nonvested pension benefits which are compromised or settled to the satisfaction of the commissioner as provided in sections 181B.01 to 181B.17.

Sec. 5 Vested benefits under act

Every employer who hereafter ceases to operate a place of employment or a pension plan within this state shall owe to his employees covered by sections 181B.01 to 181B.17 a pension funding charge which shall be equal to the present value of the total amount of vested pension benefits based upon

covered service occurring after April 10, 1974 of such employees of the employer who have completed ten or more years of any covered service under the pension plan of the employer and whose vested pension benefits have been or will be forfeited because of the employer's ceasing to operate a place of employment or a pension plan, less the amount of such vested pension benefits which are compromised or settled to the satisfaction of the commissioner as provided in sections 181B.01 to 181B.17.

Sec. 6 Nonvested benefits under act

Every employer who hereafter ceases to operate a place of employment or a pension plan within this state shall owe to his employees covered by sections 181B.01 to 181B.17 a pension funding charge which shall be equal to the present value of the total amount of nonvested pension benefits based upon covered service occurring after April 10, 1974, of such employees of the employer who have completed ten or more years of any covered service under the pension plan of the employer and whose nonvested pension benefits have been or will be forfeited because of the employer's ceasing to operate a place of employment or a pension plan, less the amount of such nonvested pension benefits which are compromised or settled to the satisfaction of the commissioner as provided in sections 181B.01 to 181B.17.

Sec. 11 Certification of amounts available

After the investigation of the employer the commissioner shall certify to the employer the present value of the total amount of nonvested and vested pension benefits which are includable in determining an employer's pension funding charge liability under sections 181B.01 to 181B.17 and the amount of such benefits which have been compromised or settled to the satisfaction of the commissioner. When the assets

of an employer available for distribution under sections 181B.01 to 181B.17 are less than the sum total of the pension funding charges owed to employees as calculated by the commissioner, the commissioner shall calculate the proportion of available assets owed to each employee so that the actual amount to be received by any covered employee at normal retirement age divided by the amount that employee would have received at normal retirement age had there been no shortage of assets available for distribution under this act is a ratio as constant as is possible from employee to employee. In seeking to keep such ratio constant the commissioner shall consider the amounts to be received by an employee from trust fund assets set aside for employee pension benefits but unavailable for distribution under sections 181B.01 to 181B.17. The amount certified by the commissioner shall be due and payable to the employees in the manner specified in section 181B.12 on the date that the employer ceases to operate its place of employment or a pension plan and shall be a lien upon the employer's assets. If the pension funding charge is not paid when due, the employer shall be liable for interest on the amount due at the rate of eight percent per annum until the charge and interest are paid, and the attorney general of this state shall bring action in an appropriate district court of this state or in the courts of another state or in an appropriate federal court as provided for in section 181B.13.

Sec. 12 Purchase of prepaid deferred annuity

The amount certified by the commissioner as due and payable to the employees shall be paid to the employees by the employer through the purchase of a prepaid deferred annuity payable to the employee when he reaches normal retirement age or to his beneficiary upon the employee's death. Such purchase shall be made through a trust authorized by the United

States Internal Revenue Service to make such purchases in a manner which exempts from Federal income taxation the money used to purchase the annuity and all income earned by such annuity up to the date of the distribution of the annuity amount. In no event shall the amount of annuity to be distributed at normal retirement age exceed the amount of the accrued normal retirement benefit.

EXHIBIT "C"

MARTIN E. SEGAL COMPANY
Consultants and Actuaries
1730 Rhode Island Avenue, N.W.
Washington, D. C. 20036
(202) 872-1870

September 12, 1974

Mr. Peter J. Brennan, Secretary
The Department of Labor
Room 3311
14th and Constitution Avenue, N. W.
Washington, D.C. 20210

Re: Notice of Eligibility for Coverage under Section 4082(b) of the Employee Retirement Income Security Act of 1974

Dear Mr. Secretary:

On behalf of the Allied Structural Steel Company, and in accordance with Section 4082(b) of the Employee Retirement Income Security Act of 1974 (the "Act"), we hereby give you notice that The Allied Structural Steel Company Salaried Employees Pension Plan (the "Plan") is eligible for plan termination insurance benefits as provided under the Act.

The following statements are made on behalf of the Allied Structural Steel Company:

1. The Plan is not a multi-employer plan.

2. On July 31, 1974, Allied Structural Steel Company commenced the termination of operations of a division known as the Industrial Construction Division, located in Minnesota. A substantial number of employees of the Division, who are participants of the Plan, were terminated on that date. It has not been determined at this time whether the discharge of the employees constitutes a partial termination of the Plan under the Internal Revenue Code of 1954 or under the Act. This Notice is filed prior to such determination because of the deadline for filing required under the Act.
3. The Plan is a plan to which Section 4021 of the Act would have applied if that section had been effective beginning July 1, 1974.

As required, the following information is supplied:

1. Plan Administrator—Mr. E. A. Richert, Allied Structural Steel Company, 1435 165th Street, Hammond, Indiana 46320. Telephone: (312) 374-1100.
2. Employer Identification Number of Allied Structural Steel Company—No. 36-2480943.
3. Employer Identification Number of Trust under the Plan —No. 36-6088363.
4. Department of Labor Number—WP 211181.

This Notice is filed by the Actuary representing the Plan on behalf of the Plan.

Sincerely,
MARTIN E. SEGAL COMPANY, INC.
By Shepard A. Sheinkman
Senior Vice President

SAS/mjm

cc: Dennis Carlin, Esq.
Ettelson, O'Hagan, Ehrich and Frankel
208 S. LaSalle Street, Suite 1000
Chicago, Illinois 60604
Mr. Wendell H. Link, Senior Vice President
The Martin E. Segal Company
230 North Michigan Avenue
Chicago, Illinois 60601

EXHIBIT "D"
U. S. DEPARTMENT OF LABOR
Office of the Assistant Secretary
Washington

Hand-delivered by Lillian M. Simet

On Sept. 12, 1974, I received a plan termination notice from the Allied Structural Steel Co. Salaried Employees Pension Plan (the "Plan")

It should be noted that under section 414(b)(3) of the Employee Retirement Income Security Act of 1974, the fiduciary responsibility provisions of Title I, subtitle B, part 4 of the Act are effective on the date of enactment (September 2, 1974) for any plan terminating after June 30, 1974, and before January 1, 1975, if the plan is one which is covered at the time of termination by section 4021 (plans covered by plan termination insurance) of the Act.

ROBERT B. LAGATHER
By Jean E. Chailler
Deputy Assistant Secretary
for Labor Management
Relations

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

Civil Action File No. 74C-3532

(Title of Case Omitted in printing)

SEPARATE ANSWER OF DEFENDANTS
WARREN SPANNAUS, E. I. MALONE, AND
PHYLLIS SPEILMAN

Defendants Warren Spannaus, E. I. Malone, and Phyllis Speilman, for their separate answer herein, admit, deny, and allege as follows:

1. Allege that these defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Count I, paragraphs 1, 4, 5, and 7, Count II, paragraphs 1, 4, and 7, and Count III, paragraph 1 of the complaint.

2. As to Count I, paragraph 2, deny that defendant Speilman is the "Administrator of the Private Pension Benefits Protection Act of [Minnesota]"; affirmatively allege that defendant Speilman is the Administrator of the Pension Protection Division of the Minnesota Department of Labor and Industry; admit the remaining allegations contained in said paragraph concerning these separate answering defendants; as to the remaining allegations contained in said paragraph, these answering defendants are without knowledge or information sufficient to form a belief as to the truth thereof.

3. Deny the jurisdictional allegation contained in Count I, paragraph 3, of the complaint.

4. To the extent that the allegations contained in Count I, paragraph 6, purport to explain provisions of the Pension

Plan, these defendants refer the Court to the text thereof; as to the allegations contained in said paragraph that purport to explain Treasury Regulation 1.4016(b)(2) promulgated by the Internal Revenue Service, these defendants refer the Court to the official text thereof.

5. As to Count I, paragraph 8, admit that "[f]or many years Allied has maintained a division office within the State of Minnesota" and that "Allied has commenced the termination of that division office in Minnesota"; allege that these defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in said paragraph.

6. As to Count I, paragraph 9, admit that "[o]n September 2, 1974, Public Law 93-406 (ERISA) was enacted"; as to the remaining allegations contained in said paragraph, these defendants refer the Court to the official text of said statute.

7. As to Count I, paragraph 10, of the complaint, admit that the State of Minnesota has enacted a law entitled the Private Pension Benefits Protection Act (Minn. Laws 1974, Chapter 437, hereinafter referred to as the "Minnesota Act") and that no regulations, rulings, or judicial interpretations have been rendered as to said Act; specifically deny that said Act is vague, indefinite, and uncertain; as to the remaining allegations contained in said paragraph relating to the Minnesota Act or the federal Employee Retirement Income Security Act of 1974 (1974 Public Law 93-406, hereinafter referred to as "ERISA"), these defendants refer the Court to the official texts thereof.

8. To the extent that the allegations contained in Count I, paragraph 11, purport to explain the operation of the Minnesota Act, these defendants refer the Court to the official

text thereof; allege that these defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in said paragraph.

9. To the extent that certain of the allegations contained in Count I, paragraph 12, set forth a hypothetical construction of the Minnesota Act, they raise issues of law not susceptible to responsive pleading; to the extent that the remaining allegations contained in said paragraph characterize the import and effect of said possible construction, allege that these defendants are without knowledge or information sufficient to form a belief as to their truth; specifically deny that "the Minnesota Act attempts to bestow a benefit upon employees who are 'employed at' a 'place of employment' within the State of Minnesota to the direct or indirect detriment of other employees."

10. To the extent that the allegations contained in Count I, paragraph 13, Count III, paragraph 15, and Count IV, paragraph 17, purport to set forth verbatim a section of the Minnesota Act, these defendants refer the Court to the official text thereof; deny the remaining allegations contained in said paragraph.

11. As to the allegations contained in Count I, paragraph 14, Count III, paragraph 16, and Count IV, paragraph 18, these defendants affirmatively allege that defendants Speilman and Malone have acted in their official capacities to carry out their statutory responsibilities under the Minnesota Act as it applies to the Pension Plan; deny the allegations contained in said paragraph in all other respects.

12. To the extent that the allegations contained in Count III, paragraph 11, set forth a hypothetical construction the Minnesota Act they are not susceptible to responsive pleading;

allege that these defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in said paragraph.

13. To the extent that the allegations contained in Count III, paragraph 12, purport to set forth the requirements and effects of Sec. 4082(b) of ERISA, these defendants refer the Court to the official text thereof; deny that "Plaintiff Richert needs the instruction of this Court as to the proper application of the assets of the Pension Plan in order to comply with the provisions of Section 409 of ERISA and to avoid any personal liability thereunder"; allege that these defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in said paragraph.

14. To the extent that the allegations contained in Count III, paragraph 13, purport to interpret provisions of the Minnesota Act, these defendants refer the Court to the official text thereof; allege that they are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations.

15. To the extent that the allegations contained in Count III, paragraph 14, purport to set forth the fiduciary responsibilities imposed by Section 409 of ERISA, these defendants refer the Court to the official text thereof; deny the remaining allegations contained in said paragraph.

16. Admit the allegations contained in Count IV, paragraph 1 of the complaint.

17. Deny the allegation contained in Count IV, paragraph 2-10, that "[j]urisdiction of this Court is also invoked under the theory of pendent or ancillary jurisdiction."

18. To the extent that the allegations contained in Count

IV, paragraphs 14, 15 and 16, purport to explain provisions of the Minnesota Act, these defendants refer the Court to the official text thereof; deny the remaining allegations contained in said paragraphs.

19. Specifically deny that the Minnesota Act is invalid, unconstitutional or unenforceable under any applicable doctrine of law.

20. Deny each and every other allegation, matter, fact, and thing not expressly admitted, denied, or qualified hereinabove.

SEPARATE DEFENSES

21. Allege that the Court lacks jurisdiction over the subject matter of this action.

22. Allege that the Court lacks jurisdiction over the persons of these separate answering defendants.

23. Allege that the complaint fails to state a claim upon which relief can be granted against these separate answering defendants.

24. Allege that this action is not ripe for adjudication.

25. Allege that as to any claims against these defendants venue in this Court is improper, or, in the alternative, the principle of *forum non conveniens* requires transfer of this action to the United States District Court for the District of Minnesota.

26. Allege that this Court should abstain from hearing this action.

WHEREFORE, these answering defendants pray that plaintiffs take nothing by their complaint, that plaintiffs' complaint be dismissed, and that these answering defendants be awarded their costs and disbursements herein.

Dated: January 2, 1975.

WARREN SPANNAUS
Attorney General
State of Minnesota
By PETER W. SIPKINS
Solicitor General
160 State Office Building
St. Paul, Minnesota 55155
Telephone: (612) 296-2961
Attorneys for Defendants
Warren Spannaus, E. I.
Malone, and Phyllis Speilman

[Affidavit of service omitted in printing]

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
THIRD DIVISION

CIVIL FILE NO. 3-75-178

(Title of Case Omitted in Printing)

AMENDED COMPLAINT

Plaintiffs, for their Amended Complaint, state and allege, as follows:

COUNT I

Plaintiffs reallege paragraphs 1 through 14 inclusive of the Complaint as though fully set forth herein.

15. As an additional basis for jurisdiction the matter in controversy exceeds the sum of $10,000 exclusive of interests and costs and arises under the Constitution and Laws of the United States. Jurisdiction is invoked pursuant to 28 U.S.C. § 1331.

The prayer for relief is realleged as though fully set forth herein.

COUNT II

Plaintiffs reallege paragraphs 1 through 14 inclusive of the Complaint as though fully set forth herein.

15. As an additional basis for jurisdiction the matter in controversy exceeds the sum of $10,000 exclusive of interests and costs and arises under the Constitution and Laws of the United States. Jurisdiction is invoked pursuant to 28 U.S.C. § 1331.

The prayer for relief is realleged as though fully set forth herein.

COUNT III

Plaintiffs reallege paragraphs 1 through 16 inclusive of the Complaint as though fully set forth herein.

17. As an additional basis for jurisdiction the matter in controversy exceeds the sum of $10,000 exclusive of interests and costs and arises under the Constitution and Laws of the United States. Jurisdiction is invoked pursuant to 28 U.S.C. § 1331.

The prayer for relief is realleged as though fully set forth herein.

COUNT IV

Plaintiffs reallege paragraphs 1 through 18 inclusive of the Complaint as though fully set forth herein.

19. As an additional basis for jurisdiction the matter in controversy exceeds the sum of $10,000 exclusive of interests and costs and arises under the Constitution and Laws of the United States. Jurisdiction is invoked pursuant to 28 U.S.C. § 1331.

The prayer for relief is realleged as though fully set forth herein.

BRIGGS AND MORGAN
By John R. Kenefick
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Bank Building
St. Paul, Minnesota 55101
291-1215
ETTELSON, O'HAGAN,
EHRLICH & FRANKEL
By Maurice J. McCarthy
Suite 1000
208 South LaSalle Street
Chicago, Illinois 60604
Attorneys for Plaintiffs

[Affidavit of service omitted in printing]

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
THIRD DIVISION

Civ. Action No. 3-75-178

(Title of case omitted in printing)

AMENDED SEPARATE ANSWER OF
DEFENDANTS WARREN SPANNAUS,
E. I. MALONE, AND PHYLLIS SPEILMAN

Defendants Warren Spannaus, E. I. Malone, and Phyllis Speilman, for their amended separate answer herein, admit, deny, and allege as follows:

1. Allege that these defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Count I, paragraphs 1, 4, 5, and 7,

Count II, paragraphs 1, 4, and 7, and Count III, paragraph 1 of the amended complaint.

2. As to Count I, paragraph 2, deny that defendant Speilman is the "Administrator of the Private Pension Benefits Protection Act of [Minnesota]"; affirmatively allege that defendant Speilman is the Administrator of the Pension Protection Division of the Minnesota Department of Labor and Industry; admit the remaining allegations contained in said paragraph concerning these separate answering defendants; as to the remaining allegations contained in said paragraph, these answering defendants are without knowledge or information sufficient to form a belief as to the truth thereof.

3. Deny the jurisdictional allegation contained in Count I, paragraph 3, of the amended complaint.

4. To the extent that the allegations contained in Count I, paragraph 6, purport to explain the provisions of the Pension Plan, these defendants refer the Court to the text thereof; as to the allegations contained in said paragraph that purport to explain Treasury Regulation 1.4016(b)(2) promulgated by the Internal Revenue Service, these defendants refer the Court to the official text thereof.

5. As to Count I, paragraph 8, admit that "[f]or many years Allied has maintained a division office within the State of Minnesota" and that "Allied has commenced the termination of that division office in Minnesota"; allege that these defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in said paragraph.

6. As to Count I, paragraph 9, admit that "[o]n September 2, 1974, Public Law 93-406 (ERISA) was enacted"; as to the remaining allegations contained in said paragraph, these defendants refer the Court to the official text of said statute.

7. As to Count I, paragraph 10, of the amended complaint, admit that the State of Minnesota has enacted a law entitled the Private Pension Benefits Protection Act (Minn. Laws 1974, Chapter 437, hereinafter referred to as the "Minnesota Act") and that no regulations, rulings, or judicial interpretations have been rendered as to said Act; specifically deny that said Act is vague, indefinite, and uncertain; as to the remaining allegations contained in said paragraph relating to the Minnesota Act or the federal Employee Retirement Income Security Act of 1974 (1974 Public Law 93-406, hereinafter referred to as "ERISA"), these defendants refer the Court to the official texts thereof.

8. To the extent that the allegations contained in Count I, paragraph 11, purport to explain the operation of the Minnesota Act, these defendants refer the Court to the official text thereof; allege that these defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in said paragraph.

9. To the extent that certain of the allegations contained in Count I, paragraph 12, set forth a hypothetical construction of the Minnesota Act, they raise issues of law not susceptible to responsive pleading; to the extent that the remaining allegations contained in said paragraph characterize the import and effect of said possible construction, allege that these defendants are without knowledge or information sufficient to form a belief as to their truth; specifically deny that "the Minnesota Act attempts to bestow a benefit upon employees who are 'employed at' a 'place of employment' within the State of Minnesota to the direct or indirect detriment of other employees."

10. To the extent that the allegations contained in Count I, paragraph 13, Count III, paragraph 15, and Count IV, paragraph 17, purport to set forth verbatim a section of the Minnesota Act, these defendants refer the Court to the official text thereof; deny the remaining allegations contained in said paragraph.

11. As to the allegations contained in Count I, paragraph 14, Count III, paragraph 16, and Count IV, paragraph 18, these defendants affirmatively allege that defendants Speilman and Malone have acted in their official capacities to carry out their statutory responsibilities under the Minnesota Act as it applied to the Pension Plan; deny the allegations contained in said paragraph in all other respects.

12. To the extent that the allegations contained in Count III, paragraph 11, set forth a hypothetical construction of the Minnesota Act they are not susceptible to responsive pleading; allege that these defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in said paragraph.

13. To the extent that the allegations contained in Count III, paragraph 12, purport to set forth the requirements and effects of Sec. 4082(b) of ERISA, these defendants refer the Court to the official text thereof; admit that "on September 12, 1974 Allied filed with the Secretary of the United States Department of Labor a protective claim for plan termination benefits under Sec. 4082(b) of ERISA"; deny that "[n]o determination has been made on the aforesaid claim at the date of filing of" the amended complaint, and that "Plaintiff Richert needs the instruction of this Court as to the proper application of the assets of the Pension Plan in order to comply with the provisions of Section 409 of ERISA and to avoid any personal liability thereunder."

14. To the extent that the allegations contained in Count III, paragraph 13, purport to interpret provisions of the Min-

nesota Act, these defendants refer the Court to the official text thereof; allege that they are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations.

15. To the extent that the allegations contained in Count III, paragraph 14, purport to set forth the fiduciary responsibilities imposed by Section 409 of ERISA, these defendants refer the Court to the official text thereof; deny the remaining allegations contained in said paragraph.

16. Admit the allegations contained in Count IV, paragraph 1 of the amended complaint.

17. Deny the allegation contained in Count IV, paragraphs 2-10, that "[j]urisdiction of this Court is also invoked under the theory of pendent or ancillary jurisdiction."

18. To the extent that the allegations contained in Count IV, paragraphs 14, 15 and 16, purport to explain provisions of the Minnesota Act, these defendants refer the Court to the official text thereof; deny the remaining allegations contained in said paragraphs.

19. As to Count I, paragraph 15, Count II, paragraph 15, Count III, paragraph 17, and Count IV, paragraph 19, admit that the matter in controversy exceeds the sum of $10,000 exclusive of interests and costs; deny that jurisdiction is invoked pursuant to 28 U.S.C. § 1331; affirmatively allege that no substantial federal question is raised by the amended complaint.

20. Specifically deny that the Minnesota Act is invalid, unconstitutional or unenforceable under any applicable doctrine of law.

21. Deny each and every other allegation, matter, fact, and thing not expressly admitted, denied, or qualified hereinabove.

SEPARATE DEFENSES

22. Allege that the Court lacks jurisdiction over the subject matter of this action.

23. Allege that the Court lacks jurisdiction over the persons of these separate answering defendants.

24. Allege that the amended complaint fails to state a claim upon which relief can be granted against these separate answering defendants.

25. Allege that this Court should abstain from hearing this action.

WHEREFORE, these answering defendants pray that plaintiffs take nothing by their amended complaint, that plaintiffs' amended complaint be dismissed, and that these answering defendants be awarded their costs and disbursements herein.

Dated: December 15, 1975.

WARREN SPANNAUS
Attorney General
State of Minnesota
RICHARD G. MARK
Assistant Solicitor General
By JAMES P. GERLACH
Special Assistant
Attorney General
And RICHARD S. SLOWES
Special Assistant
Attorney General
160 State Office Building
St. Paul, Minnesota 55155
Telephone: (612) 296-2961
Attorneys for Defendants
Warren Spannaus, E. I.
Malone, and Phyllis Speilman

[Affidavit of service omitted in printing]

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
THIRD DIVISION

3-75 Civ. 178

(Title of case omitted in printing)

STIPULATION OF FACTS

The parties to the above-referenced case, through counsel, hereby stipulate that the facts hereinafter set forth are true; that all documents appended hereto are true and correct copies of their originals; and that the following statements of facts, together with all documents identified herein and appended hereto, may be relied upon by the Court in the determination of the legal issues raised by the pleadings. This stipulation is made by the parties to this proceeding upon and subject to the conditions that:

(a) all facts recited herein are stipulated by and between the parties for the purpose of this proceeding only and nothing contained herein shall constitute an admission by either party for any other purpose, action or proceeding;

(b) this stipulation to the truth and accuracy of the facts included herein and the documents appended hereto, does not constitute an admission by either party with respect to the relevancy or materiality of any such fact or document.

1. Plaintiff Walter J. Fleck is a citizen and resident of the State of Illinois.

2. Plaintiff Edyth A. Hamler is a citizen and resident of the State of Indiana.

3. Plaintiff E. A. Richert is a citizen and resident of the State of Illinois and is the Fiduciary of the Allied Structural Steel Company Salaried Employees' Pension Plan.

4. Plaintiff Allied Structural Steel Company ("Allied") is a Delaware corporation having its main office and place of business in the State of Illinois.

5. Defendant Warren Spannaus is a citizen and resident of the State of Minnesota and is the duly elected Attorney General of the State of Minnesota.

6. Defendant E. I. Malone is a citizen and resident of the State of Minnesota and is the Commissioner of the Minnesota Department of Labor and Industry.

7. Defendant Phyllis Spielman is a citizen and resident of the State of Minnesota and is the administrator of the Pension Protection Division of the Minnesota Department of Labor and Industry.

8. Defendant Allied Structural Steel Company Salaried Employees' Pension Plan ("Pension Plan") is an entity organized on August 7, 1963, and which has existed continuously since that date. It is a plan for the benefit of salaried employees. It is not a union plan and none of the participants are union employees. The Plan is administered within the State of Illinois. The Plan uses as its depository the Northern Trust Company, Chicago, Illinois. The Northern Trust Company is also the Pension Plan Trustee. Trust funds have continuously been in the possession of Northern Trust Company since August 7, 1963. All payments required by the Plan have been and will be made from the Trust Fund. The Pension Plan has been qualified as a single-employer Plan under Section 401 of the Internal Revenue Code of 1954, and regulations thereunder.

9. The matter in controversy exceeds the sum of $10,000 exclusive of interests and costs.

10. Allied is in the business of fabricating and erecting structural steel, both for intrastate and interstate commerce.

11. Under the provisions of the pension plan, a salaried employee is entitled to full vesting of his pension for early retirement purposes if: (1) he has worked fifteen continuous years and has attained the age of 60; or (2) after he has attained the age of 55 and has worked 20 continuous years, or a lesser number of continuous years of service, which when added to his age equals the sum of 75; or (3) before reaching age 55, he has at least 25 or more years of continuous service such that the sum of his age and continuous years of service equal 80. Attached as Exhibit "A" is a copy of the relevant Article of the Pension Plan. A copy of the entire Pension Plan will be submitted to the Court at oral argument.

12. Plaintiff Fleck has been continuously employed by Allied as a salaried employee for 32 years and is over age 50, and hence he is entitled to a "fully vested" interest under the Pension Plan and may take early retirement. He has not retired and is still a participant in the Pension Plan and is entitled to the benefits thereof.

13. Plaintiff Hamler was employed by Allied as a salaried employee for 13-1/2 years. She was not entitled to seek early retirement under the Pension Plan. She recently resigned from Allied, but until her resignation was a Plan participant.

14. For many years Allied maintained a division office within the State of Minnesota. The duty of this office was to oversee the erection and general construction of steel buildings and bridges located in at least 30 states.

15. At the present time these projects are managed from the main office which has been relocated from Hammond, Indiana to Chicago Heights, Illinois. The main offices of Allied, together with a fabricating facility, were moved due to an amalgamation that occurred on December 31, 1974.

16. In connection with the amalgamation, Allied began to terminate the division construction office in Minnesota in the summer of 1974. On July 31, 1974, Allied discharged eleven out of thirty salaried employees in Minnesota. Additional employees have terminated since that date for various reasons. The Minnesota office was finally closed in February, 1975.

17. On April 9, 1974, the Minnesota Legislature adopted a law entitled the Private Pension Benefits Protection Act. The Act became effective the following day. This Act is known as Minnesota Laws, 1974, Chapter 437, and is now codified as Chapter 181B of the Minnesota Statutes. No regulations, rulings, or final judicial interpretations have been rendered concerning this Act.

18. On September 2, 1974, Public Law 93-406 was enacted. The title of this Act is the Employees Retirement Income Security Act of 1974 ("ERISA").

19. On August 7, 1974, counsel for Allied notified the Minnesota Department of Labor and Industry of the intended termination of the Minnesota division and the fact that some employees had already been terminated. A copy of the notice is attached hereto as Exhibit "B".

20. Pursuant to their responsibilities under the Minnesota Pension Act, defendants Malone and Spielman conducted an investigation concerning the closing of Allied's Minnesota division and its effect on the terminated employees' pension benefits. By letter dated August 18, 1975, a copy of which is attached hereto as Exhibit "C", defendant Malone notified Allied of the assessment of a pension funding charge under the Act of approximately $185,000 and afforded Allied an opportunity to challenge said pension funding charge through an administrative hearing. On September 19, 1975, Allied requested a hearing under protest. A copy of Allied's Applica-

tion for Hearing is attached hereto as Exhibit "D". A hearing examiner was subsequently appointed, and by order issued on or about October 28, 1975, a copy of which is attached hereto as Exhibit "E", the hearing examiner stayed the administrative proceedings pending resolution by this Court of Allied's motion for preliminary injunction enjoining those proceedings.

21. No lien can attach nor any payment become due under the Minnesota Pension Act with respect to Allied until the administrative proceedings have been concluded and a final pension funding charge has been certified pursuant to Minn. Stat. § 181B.11 (1974).

WALTER J. FLECK,
EDYTH A. HAMLER,
E. A. RICHERT, as
Fiduciary of the Allied
Structural Steel Company
Salaried Employees' Pension
Plan, and
ALLIED STRUCTURAL
STEEL COMPANY, a
Delaware Corporation
By Maurice J. McCarthy
By John R. Kenefick
By James M. Hurley
MAURICE J. McCARTHY
55 East Monroe Street
Suite 4010
Chicago, Illinois 60603

JOHN R. KENEFICK
W-2200 First National
Bank Building
St. Paul, Minnesota 55101
(612) 291-1215
JAMES M. HURLEY
208 South LaSalle Street
Suite 1000
Chicago, Illinois 60604
(312) 263-4040
WARREN SPANNAUS,
E. I. MALONE,
PHYLLIS SPIELMAN and
ALLIED STRUCTURAL STEEL
COMPANY SALARIED
EMPLOYEES' PENSION PLAN
By WARREN SPANNAUS
Attorney General
State of Minnesota
RICHARD B. ALLYN
Solicitor General
JAMES P. GERLACH
Special Assistant
Attorney General
RICHARD S. SLOWES
Special Assistant
Attorney General
160 State Office Building
St. Paul, Minn. 55155
Telephone: (612) 296-2961

EXHIBIT A

SECTION 3. ELIGIBILITY OF EMPLOYEES FOR PENSIONS.

1. After the effective date of this Plan, employees on retirement will be eligible for pensions as follows:

(1) An employee who retires on or after his normal retirement date will be entitled to a regular pension as provided in Section 5 of this Plan.

(2) An employee suffering from a total and permanent disability, as defined in Section 1 hereof, who on retirement has fifteen (15) years of continuous service, will be entitled to the following pensions:

(a) On retirement prior to his normal retirement date, the greater of:

(1) $100 per month, or

(2) A pension computed under Section 5 of this Plan but based on continuous service and average monthly earnings to date of retirement, whichever is greater.

(b) On attainment of his normal retirement date, a pension computed under sub-subparagraph (a)(2) of this paragraph.

(3) An employee who retires prior to his normal retirement date shall be entitled to an early retirement pension under the following conditions:

(a) If he retires after attaining the age of sixty (60) years, at his option, after fifteen (15) years of continuous service; or

(b) If he retires after having attained the age of fifty-five (55) years or older, after twenty (20) years of continuous service, or such other lesser number of years of continuous service which, added to his age equals the sum of seventy-five (75) years; or

(c) If he retires prior to the time he attains the age of fifty-five (55) years, after twenty-five (25) or more years of continuous service, provided that the sum of his age and years of continuous service equals eighty (80) years.

(e) If any employee becomes eligible for an early retirement pension under any subparagraph of this Section and after a break in continuous service again enters the employ of an employer, his right to such pension is vested and if, after the termination of such second period of his employment, his continuous service thereunder does not qualify him for a pension under any of the provisions of this Section because of the length of his continuous service prior to the second break in continuous service, he shall remain eligible for the pension to which he would have been entitled had he not resumed employment, and his retirement shall be presumed to commence after the time of his first break in continuous service.

(4) An employee eligible to receive an early retirement pension as provided in subparagraph (3) of paragraph 1 of this Section will be entitled, on retirement, to receive either of the following pensions he elects:

(a) A regular pension commencing at the time he attains the age of sixty-five (65); or

(b) A reduced early retirement pension at the time of retirement based on the regular pension to which he would have been entitled, reduced to its equivalent actuarial value at such time.

EXHIBIT B

LAW OFFICES
ETTELSON, O'HAGAN, EHRLICH & FRANKEL
208 South LaSalle Street
Chicago, Illinois 60604
(312) 263-4040

August 7, 1974

Mr. E. I. Malone, Commissioner
Department of Labor and Industry
444 Lafayette Road
St. Paul, Minnesota 55101

re: Minnesota Private Pension Benefits Protection Act

Dear Mr. Commissioner:

We are general counsel for Allied Structural Steel Company, located at 1435—165th Street, Hammond, Indiana 46320. Allied has operated a division in Minnesota known as the Industrial Construction Division, located at 9216 Grand Avenue South, Minneapolis, Minnesota 54420.

On behalf of Allied, we hereby notify you that Allied intends to terminate the operation of its division in Minnesota. Some of the employees of the division have been terminated and it is anticipated that the remainder of the employees will be terminated within a year to a year and one-half.

This notice is given pursuant to Section 181B.08 of the Minnesota Private Pension Benefits Protection Act. Further communications should be directed to Raymond T. Denten or the undersigned, at the above address or to Mr. C. Farnham Jarrard, Jr., President of Allied Structural Steel Company, at the Hammond, Indiana address, with a copy to the undersigned.

Sincerely,
Dennis J. Carlin

DJC/pbr
REGISTERED MAIL,
RETURN RECEIPT REQUESTED

EXHIBIT C

STATE OF MINNESOTA
DEPARTMENT OF LABOR AND INDUSTRY
Saint Paul 55101

August 18, 1975

Allied Structural Steel Company
1435 165th Street
Hammond, Indiana 46320

Attention: C. Farnham Jarrard, Jr., President

Dennis J. Carlin, Esq.
Ettelson, O'Hagen, Ehrlich & Frankel
Suite 1000
208 South LaSalle Street
Chicago, Illinois 60604

Gentlemen:

The State of Minnesota Department of Labor and Industry hereby notifies Allied Structural Steel Company of the assessment of a pension funding charge pursuant to the Minnesota Private Pension Benefits Protection Act, Minn. Stat. ch. 181B (1974) ("the Minnesota Pension Act").

By letter dated August 7, 1974, Allied Structural Steel Company notified the Department of Labor and Industry that it had commenced cessation of the operations of its Industrial Construction Division, 9216 Grand Avenue, Minneapolis, Minnesota 55402, on or about July 31, 1974. Subsequent to said notification, the Pension Division of the Department of Labor and Industry conducted an investigation to determine the respective liabilities and rights, under the Minnesota Pension Act, of Allied Structural Steel Company and its terminated employees who had been employed at a place of employment in Minnesota and who had participated in the Allied Structural Steel Company Salaried Employees Pension Plan.

The pertinent information acquired through that investigation is tabulated on the Addendum attached hereto. Based

on that information, the Pension Division has ascertained that under the provisions of the Minnesota Pension Act Allied Structural Steel Company owes a pension funding charge to the terminated employees listed. The pension funding charge is expressed in the Addendum as the sum of the present values of the accrued monthly retirement benefits[1] and the survivorship benefits[2] to which those employees and their surviving spouses, respectively, are entitled.

Pursuant to Minn. Stat. § 181B.12, the pension funding charge liability of Allied Structural Steel Company to the listed terminated employees is to be satisfied by the purchase of prepaid deferred annuities payable to each employee upon their reaching normal retirement age in an amount equal to the accrued monthly retirement benefit which that employee has earned and to each employee's surviving spouse in an amount equal to the survivorship benefit which the employee has earned.[3] The cost of the purchase of said annuities need not be equivalent to the pension funding charge indicated in

[1] "Accrued monthly retirement benefit" means the benefit payable to the employee (under the Allied Structural Steel Company Salaried Employees Pension Plan as in effect of the date of commencement of cessation of operation of the Industrial Construction Division, July 31, 1974) in the event of retirement at the normal retirement age (65), to which the employee would be entitled if he continued to earn annually until normal retirement age the same rate of compensation as that which he had been earning prior to cessation and upon which his pension credit would have been computed under the plan at the rate specified by the plan for the years subsequent to cessation, multiplied by a fraction not to exceed one, the numerator of which is the total number of his years of covered service as of the date of cessation, and the denominator of which is the total number of years he would have had in covered service in such plan as of normal retirement age if he had continued to be an active participant in the plan until attaining such age.

[2] "Survivorship benefit" means fifty percent (50%) of the accrued monthly retirement benefit, payable to the terminated employee's surviving spouse in the event of the employee's death after reaching normal retirement age.

[3] In no event shall the amount of annuity to be distributed at normal retirement age exceed the amount of the accrued monthly retirement benefit.

the Addendum. Such purchase shall be made through a trust authorized by the United States Internal Revenue Service to make such purchases in a manner which exempts from federal income taxation the money used to purchase the annuity and all income earned by such annuity up to the date of distribution of the annuity amount. Proof of such purchase shall be provided to the Pension Division within 72 hours thereof.

A hearing will be provided for the determination and resolution of any disputed issues concerning the assessed pension funding charge liability if a written Request for Hearing is served upon the Department of Labor and Industry within thirty (30) days of receipt of this letter. Such Request for Hearing shall include a short and plain statement of all issues on which a hearing is desired, the determination sought, and the grounds therefor. Issues which may be raised include, but are not limited to: objections to the assessed pension funding charge liability, manner and method of satisfaction of said liability, and determination of amounts settled or compromised. Within ten (10) days of receipt of a timely-served Request for Hearing, the Department of Labor and Industry shall appoint a hearing officer and commence contested case proceedings pursuant to Minn. Reg. Atty. Gen. 407, Rule 4.

Unless objection is made hereto in the manner specified above, the assessed pension funding charge liability shall be deemed certified pursuant to Minn. Stat. § 181B.11 and shall be due and payable in the manner heretofore described sixty (60) days from receipt of this notice. Pursuant to Minn. Stat. § 181B.11, if said liability is not satisifed within the time provided, interest thereon shall accrue from the date due at the rate of eight percent (8%) per annum until the liability and interest are paid.

DEPARTMENT OF LABOR AND INDUSTRY
E. I. MALONE
Commissioner

ADDENDUM

INDUSTRIAL CONSTRUCTION DIVISION OF ALLIED STRUCTURAL STEEL COMPANY

ACCRUED MONTHLY RETIREMENT BENEFITS AND PRESENT VALUES AS OF JULY 31, 1974

Terminated Employee	Monthly Salary (as of July 31, 1974)	Credited Service Years	Credited Service Months	Accrued Monthly Retirement Benefit	Present Value* Employee Retirement Benefit	Present Value* Surviving Spouse's Benefit
Dyer, Joseph E.	$1,518.65	19	4	$294	$ 9,937	$ 0
Everson, Merrill	1,750.00	12	3	214	9,369	0
Guenzler, Donald	2,369.54	17	—	403	10,067	1,616
Hennessey, John	2,048.33	14	3	292	12,784	2,472
Johnson, Ruby	542.89	13	10	75	3,036	87
Johnson, Harold	2,315.25	20	8	478	25,956	5,584
Keough, Virginia	1,066.16	24	11	266	14,541	429
Leschner, Harry	2,073.71	12	9	264	16,956	3,318
Martin, Carol	629.35	12	4	78	2,589	44
Sehlin, A. A. Jr.	3,461.50	21	—	727	25,859	3,914
Sehlin, David G.	2,994.25	14	2	424	10,591	1,592
Thery, Fredrick	1,000.00	13	9	138	4,433	852
Westgard, Paul D.	1,998.25	20	3	405	19,725	0
					$165,843	$ 19,908
						165,843
				PENSION FUNDING CHARGE		$185,751

* Basis: 1971 Group Annuity Table with 5% interest.

EXHIBIT D

STATE OF MINNESOTA

DEPARTMENT OF LABOR AND INDUSTRY

In Re: Allied Structural Steel

APPLICATION FOR HEARING, UNDER PROTEST

Comes now Allied Structural Steel, (hereinafter "applicant") and applies to the Department of Labor and Industry, State of Minnesota, under protest, for a contested case hearing pursuant to Minn. Reg. Atty. Gen. 406, Rule 3. In accordance with said rule, applicant states as follows:

1. The name and address of applicant is Allied Structural Steel, 2705 State Street, Chicago Heights, Illinois.

2. On August 18, 1975, the Minnesota Department of Labor and Industry notified applicant of the assessment of a pension funding charge pursuant to the Minnesota Private Pension Benefits Act, Minn. Stat. 1974, Chapter 181B. A copy of said letter is attached hereto as Exhibit A and made a part hereof by reference.

3. On December 17, 1974, applicant and others commenced an action against the Commissioner of Labor and Industry, and others, in the United States District Court for the Northern District of Illinois, Eastern Division, requesting a declaration that the Minnesota Private Pension Benefits Act is invalid on a number of grounds, including the following:

a. The Employees Retirement Income Security Act of 1974 (ERISA) has preempted the field;

b. The Minnesota Act is an unreasonable regulation of Interstate Commerce in violation of Article I, Section 8 of the Constitution of the United States;

c. The Minnesota Act impairs the obligations of an exist-

ing contract between applicant and its employees in violation of Article I, Section 10 of the United States Constitution;

d. The Minnesota Act deprives applicant of its property without due process of law in violation of Amendment XIV of the United States Constitution;

e. The Minnesota Act became inoperative by its own terms upon the passage of ERISA;

f. The Minnesota Act is vague and uncertain;

g. The Minnesota Act is substantially unfair to the participants and beneficiaries of Allied's Pension Plan who are not covered by the Minnesota Act;

h. The Minnesota Act fails to provide notice to the person against whose assets a lien is to be imposed;

i. The Minnesota Act does not provide a hearing and an opportunity to defend against the imposition of a lien upon an employer's assets;

j. In that the Minnesota Act does not apply to all employers, but only those who have established a pension plan, the Act is unreasonable and arbitrary in violation of Amendment XIV to the United States Constitution.

4. Said action was transferred on a venue ruling to the United States District Court, District of Minnesota, Third Division, on April 28, 1975, and is presently assigned to the Honorable Donald Alsop. Motions of applicant are pending before the court for summary judgment or for an injunction to restrain the Commissioner and others from enforcing the State Act against applicant.

5. Due to the short period (30 days) in which applicant has to request a hearing, and the fact that a full hearing on the motion for a temporary injunction has not yet occurred because of scheduling conflicts in the federal courts, applicant has been forced to file this Application under protest.

6. As grounds for a hearing, applicant states as follows:

a. The Department of Labor and Industry lacks jurisdiction to issue the assessment because of the pending federal court action.

b. As a matter of comity, the Department of Labor and Industry should refrain from any assessment procedures while the federal court action is pending.

c. In accordance with the pleadings and assertions made by applicant in the federal court action, and summarized in paragraph 3 herein, applicant has no liability to the terminated employees for a pension funding charge.

d. If any liability is present to the terminated employees, the schedule attached to the assessment notice, (Exhibit A) called the accrued monthly retirement benefits and present values as of July 31, 1974, is inaccurate, misleading and based on incorrect actuarial assumptions.

e. If any liability is present to the terminated employees, the manner and method of satisfaction of said liability is arbitrary, capricious and constitutes a taking of applicant's property without due process of law, in violation of federal and state constitutional provisions.

7. Other than the applicant, the names of persons affected by this determination are the terminated employees, listed on the Addendum or schedule to Exhibit A.

Dated: September 19, 1975.

JOHN R. KENEFICK
Attorney for Allied
Structural Steel
W-2200 First National
Bank Building
St. Paul, Minnesota 55101

State of Minnesota
County of Ramsey—ss.

John R. Kenefick, being first duly sworn, deposes and says that he has read the foregoing application and that the same is true of his own knowledge, information and belief.

SHARON FRANER
Notary Public

(Jurat)

EXHIBIT E
BEFORE THE DEPARTMENT OF
LABOR AND INDUSTRY

State of Minnesota
County of Ramsey

In the Matter of the Application of Allied Structural Steel Company for a Hearing to Determine its Rights and Liabilities under Minn. Stat. §181B.01-.17 (1974)

ORDER OF POSTPONEMENT OF PREHEARING CONFERENCE VACATING ORDER OF OCTOBER 15, 1975, AND CLARIFYING GROUNDS FOR POSTPONEMENT

WHEREAS, the undersigned has been appointed as hearing examiner to preside in the above-entitled matter and issued an order dated October 15, 1975, in said matter; and

WHEREAS, the Commissioner of the Department of Labor and Industry has requested reconsideration of that order and said request has been considered by the undersigned;

IT IS HEREBY ORDERED that the above-referenced order of October 15, 1975 is vacated; and

IT IS FURTHER ORDERED that the pre-hearing conference in this matter be and hereby is postponed only until such time as the federal court renders its decision on the pending motion by Allied Structural Steel Company to enjoin the administrative proceedings herein; and

IT IS FURTHER ORDERED that the counsel for the Commission of the Department of Labor and Industry, a defendant in said federal court action, shall serve upon the undersigned a copy of all orders and judgments issued by the federal court in said action at such time as said orders and decisions are issued; and

IT IS FURTHER ORDERED that appropriate notice shall be served on all the parties hereto as to the time and place of a pre-hearing conference in the above-captioned matter in the event these proceedings are not enjoined by the federal court.

S. B. FRIED
Hearing Examiner
7th Floor, American Center Building
160 East Kellogg Boulevard
St. Paul, Minnesota 55155

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
THIRD DIVISION

3-75 Civ. 178

WALTER J. FLECK, EDYTH A. HAMLER, E. A. RICHERT, as Fiduciary of the Allied Structural Steel Company Salaried Employees' Pension Plan, and ALLIED STRUCTURAL STEEL COMPANY, a Delaware corporation,

Plaintiffs,

vs.

WARREN SPANNAUS, E. I. MALONE, PHYLLIS SPEILMAN and ALLIED STRUCTURAL STEEL COMPANY SALARIED EMPLOYEES' PENSION PLAN,

Defendants.

MEMORANDUM ORDER

JOHN R. KENEFICK, Esq., Briggs and Morgan, St. Paul, Minnesota, together with MAURICE J. McCARTHY, Esq., Ettelson, O'Hagan, Ehrich & Frankel, Chicago, Illinois, appeared for the plaintiffs.

Warren Spannaus, Attorney General, State of Minnesota, by JAMES P. GERLACH, Esq., and RICHARD S. SLOWES, Esq., Special Assistant Attorneys General, appeared for the defendants.

CURTIS L. ROY, Esq., Dorsey, Windhorst, Hannaford, Whitney & Halladay, Minneapolis, Minnesota, together with FRANK C. HEATH, Esq., Jones, Day, Reavis & Pogue, Cleveland, Ohio, appeared Amici Curiae for White Motor Corporation and White Farm Equipment Company.

Before: HEANEY, Circuit Judge, and DEVITT and ALSOP, District Judges.

Plaintiffs have commenced the above-entitled action challenging the enforceability and constitutionality of the Minnesota Private Pension Benefits Protection Act, Minn. Stat. § 181B.01 *et seq.* (1974) (hereinafter the Pension Act). The relevant facts are set forth in *Fleck et al v. Spannaus et al.*, 412 F. Supp. 366 (D. Minn. 1976), where the court, sitting as a single judge, denied certain aspects of plaintiffs' motions and requested the convening of a three-judge court.

Presently before the three-judge court is plaintiffs' motion for summary judgment enjoining the enforcement of the Pension Act on the grounds that (1) it became null and void by its own terms when the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001 *et seq.* (hereinafter "ERISA") was enacted; and (2) it is in violation of numerous provisions of the United States Constitution. Defendants have moved for abstention in order to permit the Pension Act to be construed by the state court. Alternatively, defendants argue that the Pension Act is constitutional in all respects.

Prior to addressing the various motions, the court in the exercise of its inherent power is constrained to examine the existence of a justiciable controversy as it relates to the three individual plaintiffs, Fleck, Hamler and Richert. Article III, §2 of the Constitution limits the jurisdiction of the federal courts to cases or controversies. The standing of the plaintiffs to pursue their claims is an aspect of the case or controversy requirement. *Urban Contractors Alliance of St. Louis v. Bi-State Development Agency*, 531 F.2d 877, 881 (8th Cir. 1976).

The Eighth Circuit recently articulated its views on standing by stating:

The test of constitutional standing has been variously expressed as "real and immediate injury" to the plaintiff, *Rizzo v. Goode*, —— U.S. ——, 96 S.Ct. 598, 46 L.Ed.2d 561, 44 U.S.L.W. 4095, 4098 (1976), "a distinct and palpable injury to himself", *Warth v. Seldin, supra*, 422 U.S. at 501, 95 S.Ct. at 2206, or "injury in fact", *Schlesinger v. Reservists Committee to Stop the War*, 418 U.S. 208, 218, 94 S.Ct. 2925, 41 L.Ed.2d 706 (1974). But under any articulation of the standard it is fundamental that the plaintiff himself must have suffered the injury he seeks to redress. For if the plaintiff has not "alleged such a personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination of difficult constitutional questions * * * ", *Baker v. Carr*, 369 U.S. 186, 204, 82 S.Ct. 691, 703, 7 L. Ed.2d 663 (1962), no "case or controversy" is presented. *Urban Contractors, supra*, 531 F.2d at 881.

The individual plaintiffs have challenged the enforceability and constitutionality of the Pension Act in Counts I-III of the amended complaint. Fleck and Hamler are salaried employees of the corporate plaintiff, Allied Structural Steel Company (hereinafter Allied). Richert is the Fiduciary of the Allied Structural Steel Company Salaried Employees Pension Plan (hereinafter the Pension Plan). However, the rights and obligations of the individual plaintiffs under the Pension Plan are not affected by the Pension Act. The Pension Act is addressed solely to the relationship between terminated employees and the employer and the relief which it seeks to provide can be asserted only against the employer. *See* Minn. Stat. §§ 181B.03 and .11. Thus it does not appear that any injury will inure to the individual plaintiffs and the court is compelled to conclude that such plaintiffs have not sufficiently alleged a "personal stake in the outcome" to meet the constitutional standing requirements. Accordingly, the claims of Fleck, Hamler and Richert, as contained in Counts I-III of the amended complaint will be dismissed.

Plaintiffs have moved for summary judgment on the grounds that the Pension Act by its own terms has self-destructed. Minn. Stat. § 181B.17 provides in relevant part:

> ". . . [S]ections 181B.01 to 181B.17 [the Minnesota Pension Act] shall become null and void upon the institution of a mandatory plan of termination insurance guaranteeing the payment of a substantial portion of an employee's vested pension benefits pursuant to any law of the United States.

It is unclear precisely when the conditions set forth in the so-called "null and void provision" were or will be satisfied. ERISA contains a subchapter covering termination insurance, 29 U.S.C. § 1301 *et seq.*, which became effective on September 2, 1974. 29 U.S.C. § 1381. However, ERISA's vesting provisions for plans in existence on January 1, 1974 did not become effective until after December 31, 1975. 29 U.S.C. § 1601(b)(2).

In addition to the question of the duration of the Pension Act, it is also unclear what happens to any rights which have accrued or any proceedings—administrative or judicial—which may have been instituted. No savings clause is contained in the Pension Act and no precise statutory rule of construction exists to aid in the construction of the null and void provision. *See* Minn. Stat. ch. 645 (1974). The Attorney General argues that the self-destruct language in the null and void provision is analagous to the repeal of a law and that accrued and existing actions should be preserved as in the case of repeal. *See* Minn. Stat. § 645.35.

Faced with these uncertainties of state law, it is difficult for this court to forecast how the null and void provision might be interpreted by the state courts. More importantly, depending on the interpretation given to such provision, it is entirely possible that this court need not address the constitutional questions raised herein[1] and thus comport with the well established federal policy of avoiding constitutional adjudication where it is not absolutely essential to the disposition of the case. *Hagans v. Lavine*, 415 U.S. 528, 547 n.12 (1974).

Where, as here, uncertain questions of state law are closely intertwined with the constitutional challenge the Supreme Court has often stated that the state tribunal should be given an opportunity to provide ". . . an authoritative declaration of applicable state law." *Reetz v. Bozanich*, 397 U.S. 82, 85 (1970); *City of Meridian v. Southern Bell Telephone & Telegraph Co.*, 358 U.S. 639, 640 (1959). Such principles were recently reaffirmed in *Carey v. Sugar*, —— U.S. ——, 96 S.Ct. 1208, 44 U.S.L.W. 4416 (1976).

The special circumstances of this case provide compelling reasons for extending to the Minnesota Supreme Court an opportunity to provide an authoritative declaration on the null and void provision. The Minnesota Legislature expressly indicated that the Pension Act was to have a limited duration and the opportunity of the State supreme court to construe such provision would serve to minimize federal-state friction. *See Harman v. Forssenius*, 380 U.S. 528, 534 (1965).

However, rather than merely abstaining from interpreting the null and void provision, thereby creating ". . . the delay

[1] E.g., a constitutional resolution would be unnecessary if the Minnesota Supreme Court interprets the Pension Act to have become null and void on September 2, 1974 and that as a result all accrued and existing causes of action likewise ceased to exist at that time.

and expense to which application of the abstention doctrine inevitably gives rise," *England v. Medical Examiners*, 375 U.S. 411, 418 (1964), this court chooses to avail itself of the Minnesota certification procedure, Minn. Stat. § 480.061 (1974).

This type of procedure has been recognized by the Supreme Court and used by the Court on various occasions. *See e.g., Bellotti v. Baird*, —— U.S. ——, 44 U.S.L.W. 5221 (1976); *Clay v. Sun Insurance Office*, 377 U.S. 179 (1964); *Dresner v. Tallahassee*, 375 U.S. 136 (1963). The Minnesota certification statute has been recognized by the Eighth Circuit[2] but the court's research has not disclosed any instance in which it has actually been used.

The certification procedure is not without its critics[3] but the court is persuaded that the unique circumstances of this case call for an articulation by the Minnesota Supreme Court and that certification is the most efficient means to achieve it. The court is confident that the Minnesota Supreme Court will expeditiously resolve the issues herein certified to the end that these proceedings may then go forward. Accordingly, the questions of the duration of the Minnesota Pension Act and the existence of causes of action thereunder will be certified to the Minnesota Supreme Court pursuant to Minn. Stat. § 480.061.

In the interim, while the certified questions are pending, this court chooses to go forward to establish such additional facts as are required for a final determination of all constitutional issues if the same becomes necessary. Pursuant to Fed. R.Civ.P. 53 a master will be appointed to determine (1) the contributions to the Pension Plan by the terminated Minnesota

[2] *See Guillard v. Niagara Machine and Tool Works*, 480 F.2d 20, 24-25 (8th Cir. 1973).

[3] *See In re Elliot*, 446 P.2d 347, 371 (Wash. 1968) (Hale, J. dissenting).

employees of Allied; (2) the actuarial assumptions which were applied to the Pension Plan; (3) the cost of pre-paid annuities under the Pension Act which would be purchased for the terminated employees of Allied; and (4) such other matters as the master deems relevant and necessary for a final determination of the constitutional issues.

Upon the foregoing,

IT IS ORDERED That the claims of Walter J. Fleck, Edyth A. Hamler and E. A. Richert, as contained in Counts I-III of the amended complaint be and the same hereby are in all respects dismissed.

IT IS FURTHER ORDERED That a certification order be issued to the Minnesota Supreme Court to construe the language of Minn. Stat. § 181B.17.

Dated: August 5, 1976.

GERALD W. HEANEY
Circuit Judge
Eighth Circuit Court of Appeals

EDWARD J. DEVITT
Chief Judge
United States District Court

DONALD D. ALSOP
District Judge
United States District Court

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
THIRD DIVISION

3-75 Civ. 178

WALTER J. FLECK, EDYTH A. HAMLER, E. A. RICHERT, as Fiduciary of the Allied Structural Steel Company Salaried Employees' Pension Plan, and ALLIED STRUCTURAL STEEL COMPANY, a Delaware corporation,

Plaintiffs,

vs.

WARREN SPANNAUS, E. I. MALONE, PHYLLIS SPEILMAN and ALLIED STRUCTURAL STEEL COMPANY SALARIED EMPLOYEES' PENSION PLAN,

Defendants.

ORDER APPOINTING MASTER

Pursuant to the Memorandum Order of the court dated August 5, 1976, the court hereby appoints Gary J. Haugen as Master in the above-entitled matter to have and carry out the following duties:

1. determine the contributions to the Allied Structural Steel Company Salaried Employees Pension Plan by the terminated Minnesota employees of Allied Structural Steel Company;

2. determine the actuarial assumptions which were applied to the Allied Structural Steel Company Salaried Employees Pension Plan;

3. determine the cost of pre-paid annuities under the Minnesota Private Pension Benefits Protection Act which would

be purchased for the terminated employees of Allied Strural Steel Company;

4. determine such other matters as the Master deems relevant and necessary for a final determination of the constitutional issues.

Said Master shall be compensated as hereafter determined and be reimbursed for the reasonable expenses incurred in the performance of the duties prescribed herein.

The fees and expenses of said Master shall be apportioned equally amongst the parties to the action with the plaintiff Allied Structural Steel Company paying one-half of such amount and the defendant employees of the State of Minnesota paying the remaining one-half.

IT IS SO ORDERED.

Dated: August 5, 1976.

GERALD W. HEANEY
Circuit Judge
Eighth Circuit Court of Appeals

EDWARD J. DEVITT
Chief Judge
United States District Court

DONALD D. ALSOP
District Judge
United States District Judge

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
THIRD DIVISION

3-75 Civ. 178

WALTER J. FLECK, EDYTH A. HAMLER, E. A. RICHERT, as Fiduciary of the Allied Structural Steel Company Salaried Employees' Pension Plan, and ALLIED STRUCTURAL STEEL COMPANY, a Delaware corporation,

Plaintiffs,

vs.

WARREN SPANNAUS, E. I. MALONE, PHYLLIS SPEILMAN and ALLIED STRUCTURAL STEEL COMPANY SALARIED EMPLOYEES' PENSION PLAN,

Defendants.

CERTIFICATION ORDER

Pursuant to Minn. Stat. § 480.061 (1974) the United States District Court for the District of Minnesota hereby certifies the following questions of law based on the stated facts to the Minnesota Supreme Court.

STATEMENT OF FACTS

The relevant facts of this action are set forth in two previously issued Memorandum Orders of this court. *See* Memorandum Order dated March 18, 1976, 412 F. Supp. 366, and Memorandum Order dated August 5, 1976. Additional facts are set forth in a stipulation entered into between the parties. These orders and stipulation are submitted to the Minnesota Supreme Court for its consideration.

Also submitted to the Court for its consideration of the questions herein are the pleadings filed in this action and a copy

of the Allied Structural Steel Company Salaried Employees Pension Plan.

QUESTIONS OF LAW

(1) Upon what date did the Minnesota Private Pension Benefits Protection Act, Minn. Stat. § 181B.01 *et seq.* (1974) (hereinafter the "Minnesota Pension Act") become null and void pursuant to Minn. Stat. § 181B.17?

(2) What effect does the termination of the Minnesota Pension Act have upon any cause of action which may have accrued prior to the date of such termination but upon which no administrative proceeding had been commenced?

(3) What effect does the termination of the Minnesota Pension Act have upon any cause of action which was the subject of a pending administrative proceeding on the date of the termination of the Act?

IT IS SO ORDERED.

Dated: August 5, 1976.

GERALD W. HEANEY
Circuit Judge
Eighth Circuit Court of Appeals

EDWARD J. DEVITT
Chief Judge
United States District Court

DONALD D. ALSOP
District Judge
United States District Court

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
THIRD DIVISION

No. 3-75 Civ. 178

Walter J. Fleck, Edyth A. Hamler, E. A. Richert, as Fiduciary of the Allied Structural Steel Company Salaried Employees' Pension Plan, and Allied Structural Steel Company, a Delaware corporation,

Plaintiffs,

vs.

Warren Spannaus, E. I. Malone, Phyllis Speilman and Allied Structural Steel Company Salaried Employees' Pension Plan,

Defendants.

MEMORANDUM OPINION

Before HEANEY, Circuit Judge, and DEVITT and ALSOP, District Judges.

HEANEY, Circuit Judge.

The plaintiffs brought this action to contest the enforceability and constitutionality of the Minnesota Private Pension Benefits Protection Act, Minn. Stat. §181B.01 *et seq.* (1974) (hereinafter the Pension Act). The relevant facts are set forth in *Fleck v. Spannaus*, 412 F.Supp. 366 (D. Minn. 1976). In that decision, Judge Alsop held that the Pension Act was not preempted by the Employee Retirement Security Act of 1974, 29 U.S.C. §1001 *et seq.* (hereinafter ERISA) until January 1, 1975, and that a three-judge court was necessary to decide the various constitutional issues raised. On August 5, 1976, the three-judge court certified several questions to the Minne-

sota Supreme Court concerning the Pension Act's "self-destruct" provisions and held that the individual plaintiffs, two employees of Allied Structural Steel Company (hereinafter Allied) and the pension fund trustee, lacked standing to sue. In addition, the court ordered the appointment of a special master to take evidence and make findings on certain factual matters.

Pursuant to Judge Alsop's certification order, the Minnesota Supreme Court held that the Pension Act continued in effect until January 1, 1975, when the provisions of ERISA preempted the state act and that this preemption preserved the pending causes of action. In other words, the terms of the Pension Act were in force and applicable to the eleven employees terminated by Allied on July 31, 1974.

On April 7, 1977, the special master issued his findings to which the parties subsequently stipulated. In particular, he found that:

1) it was impossible to determine which contributions by Allied to the plan were allocable to the terminated employees;
2) there were insufficient assets in the pension fund to pay the terminated employees after paying all employees who had vested rights under the plan;
3) the possibility of a plant closure was not considered in calculating Allied's annual contributions to the pension plan; and
4) the cost of prepaid deferred annuities which Allied would have to purchase for the terminated employees ranged from $114,171.93 to $185,751.00.

Before this three-judge court, Allied claims the Pension Act suffers the following constitutional infirmities:

1) it impairs the obligation of contract; and
2) it violates the due process, equal protection and commerce clauses of the United States Constitution.

Although Allied raises each of these issues in its initial complaint, they seem to rely almost entirely on the contract clause argument. Accordingly, our decision will focus primarily on this issue.

I. *The Impact of United States Trust Co. of New York v. New Jersey.*

Over the last century, the Contract Clause of the United States Constitution has played a limited role in constitutional adjudications concerning limitations on state power. A recent decision of the United States Supreme Court, *United States Trust Co. of New York v. New Jersey*, —— U.S. ——, 52 L.Ed.2d 92 (1977), provides the most definitive statement on the current status of the Contract Clause. This case involved a statutory covenant between New York and New Jersey which limited the ability of the Port Authority to subsidize rail passenger transportation from revenues and reserves pledged as security for bonds issued by the Authority. In 1974, the legislatures of both states repealed the security promise in the 1962 covenant. The legislation was sought when it became apparent that, in providing a greater share of its revenues for rail mass transit, Port Authority reserves would drop below levels promised as security in the original covenant. *United States Trust Co. of New York v. New Jersey, supra* at 52 L.Ed.2d 102-104.

In assessing the bondholders' Contract Clause challenge, the Supreme Court began by drawing an important distinction between general regulatory legislation impairing a range of private contracts and legislation abrogating a particular contract to which the state was a party. As to the former, the

Court acknowledged that a more relaxed standard of review must apply; but when the state itself was a party, it conceded that complete deference to the legislature's judgment was inappropriate.

> The States must possess broad power to adopt general regulatory measures without being concerned that private contracts will be impaired, or even destroyed, as a result. * * * As is customary in reviewing economic and social regulation, however, courts properly defer to legislative judgment as to the necessity and reasonableness of a particular measure.
>
> * * *
>
> In applying this standard [to the instant case], however, complete deference to a legislative assessment of reasonableness and necessity is not appropriate because the State's self-interest is at stake. A governmental entity can always find a use for extra money, especially when taxes do not have to be raised.

United States Trust Co. of New York v. New Jersey, supra at 52 L.Ed.2d 109-110, 112.

Thus, an important first step in analyzing the constitutionality of a particular impairment is to determine the nature the contractual relation with which the law conflicts.

A second issue addressed by the Court in determining the constitutionality of a particular impairment is the extent of that impairment. *Id.* at 113. Without drawing a clear distinction between substantial and insubstantial impairments, the Court, at several points in the opinion,[1] suggested that a factor to be considered in determining the extent of impairment is the legitimate expectations of the contracting parties. "Ap-

[1] *United States Trust Co. of New York v. New Jersey*, —— U.S. ——, 52 L.Ed2d 92,,n.17, n.26 (1977).

parently, to the extent the obligation imposed or abrogated by the challenged legislation was, in fact, or could have been anticipated by the contracting parties, the impairment of those bargained for expectations is diminished.

Ultimately, the Court held that an impairment can be sustained only if reasonable and necessary to serve important purposes of the state. *Id.* at 114. Total repeal of the 1962 covenant was not necessary, in the Court's judgment, because less drastic modifications of the security terms would have accomplished the state's objectives. The legislation was not reasonable because the state was well aware of pending mass transit problems when the covenant was enacted. *Id.* at 114, 115.

With this review of the Supreme Court's most current statement on the Contract Clause, we now turn to the instant case.

II. *The Extent of Impairment.*

Allied argues and the State of Minnesota seems to concede that there has been an impairment of contract. Our attention is directed then to the extent of that impairment. In this regard, Allied contends that the impairment is substantial because the Pension Act burdens employers with pension obliga-

tions that were not actuarially anticipated.[2] First, Allied argues that their contributions to the pension plan were actuarially determined on the basis of certain assumptions and that by providing benefits to those who would have forfeited their benefits under those assumptions, unanticipated

[2] The actuarial assumptions and funding method used in developing the Allied pension plan are set forth at Exhibit 7 of the Special Master's Findings:

Mortality rates — Group Annuity Table for 1951 projected to 1960, set back 5 years for women.

Disability rates:

Age	*Rate (%)*
37	.1
42	.1
47	.2
52	.6
57	1.1
62	3.2

Termination rates before retirement, all causes:

	Rate (%)	
Age	*Men*	*Women*
22	5.4	5.4
27	4.5	4.5
32	3.3	3.3
37	2.0	2.0
42	1.0	1.0
47	.7	.5
52	1.3	1.0
57	2.2	1.8
62	4.9	4.3

Salary scale:

Age	*Present salary as a percent of salary at 65*
22	33.1%
27	40.9
32	49.0
37	57.4
42	65.9
47	74.4
52	82.8
57	91.1
62	98.2

Retirement age — 66, or completion of service requirement if later.

Interest rate — 4-1/2%.

Valuation of assets — At cost, with accrual of unpaid company contribution.

Funding method — Entry age normal cost-frozen initial liability.

liability is imposed. This argument is belied by Allied's own admission that the possibility of plant closure was not relied upon by their actuaries in calculating plan contributions.[3]

Closely paralleling the preceding argument, Allied claims that the ten-year vesting provision of the Pension Act imposes liability which was not anticipated by Allied or its actuaries. We do not quarrel with their claim that an acceleration of vesting was not anticipated and that the Pension Act impaired Allied's employment agreements in this regard. Nevertheless, we do not believe the obligations imposed by the Pension Act unconstitutionally expand upon the contracting parties initial expectations or the actuaries' original assumptions.

Generally, employer contributions to pension plans are determined in the following fashion. Actuaries first calculate the amount an employer is likely to pay out in benefits over the course of the plan; this calculation, of course, is based on certain assumptions regarding mortality, job changes, and other causes of employee turnover.[4] To meet this anticipated

[3] Allied's argument in this regard does highlight a different aspect of the termination problem. Because plant closure is not actuarially anticipated, forfeiture of pension benefits for this reason may actually provide a windfall to the employers. As noted in *Lucas v. Seagrave Corporation*, 277 F.Supp. 338, 345 (D. Minn. 1967):

> [I]t has been asserted that an employer's pension plan contributions are determined by an actuarial formula which assumes that any employee whose employment is terminated forfeits his pension benefits. * * * However, such an assumption may not cover the occurrence of a group termination. The actuarial formula assumes a reasonable turnover rate for employees established by experience with individual separations over a period of time. Where there is a termination of a substantial number of the plan participants, it seems clear that such a turnover is not anticipated by the formula. The result is that an employer who has discharged a relatively large number of employees receives a windfall, palpably in excess of actuarial assumptions, in the form of pension credit forfeitures which he can use to relieve for some time his future premium liability for the remaining employees.

[4] *See* n.3, *supra*. We note again that these assumptions do not include the prospect of plant closure.

liability, the actuaries next project the amount an employer must contribute to adequately fund these future payments. For example, an actuary may determine that annual contributions of two or three percent of payroll are necessary to meet the first series of anticipated payments and to accumulate an interest-earning reserve to cover the remainder of the plan.

Certainly, Allied did not and could not be expected to anticipate the possibility of vesting at an earlier date for the terminated Minnesota employees. But, the claim that payment to these employees was not anticipated distorts the way actuarial assumptions and funding plans operate and ignores the fact that a portion of Allied's annual contribution was made to accumulate a reserve sufficient to make payments to these employees at some future date. In other words, while the date of payment could not be anticipated, the likelihood of payment was, as was the need, to accumulate a reserve for that purpose.

We raise the preceding arguments not to suggest that a sufficient fund has accumulated in the Allied pension plan out of which Pension Act liabilities can be paid. In fact, the Pension Act does not impose any liability on pension plan funds for the payment of forfeited benefits. The Act specifically provides that the *employer* is liable for payment of the pension funding charge and that funds already contributed to the plan are to remain for the benefit of continuing employees. *See* Minn. Stat. §§181.03-.07, 181B.02 subd. 18, and 181B.16 (1974). Rather, the arguments raised above are offered to shed some light on the concerns expressed by the Supreme Court in *New York Trust* for the "legitimate expectations of the contracting parties." We believe the obligations imposed by the Pension Act are not so significantly beyond the parties' initial expectations that the Act should be declared unconstitutional.

III. *The Reasonableness and Necessity of the Impairment.*

As reaffirmed in *New York Trust*, the standard for reviewing state legislation impairing private contracts varies with the nature of that contractual relationship. When the state is not a party to the contract, far greater deference is given to the legislative judgment that the impairment is reasonable and necessary to the accomplishment of legitimate policy aims. In granting states broader powers to adopt general regulatory measures, it is probably assumed that the legislature will act impartially and in the best interest of all when it is not itself a party to the contract impaired. Note, *The Constitutionality of the New York Wage Freeze and Debt Moratorium: Resurrection of the Contract Clause*, 125 U.Pa.L.Rev. 167, 188-191 (1976). Since the State of Minnesota was not a party to the contracts allegedly impaired by the Pension Act,[5] we must review that legislation with considerable deference to the policy judgments of the Minnesota legislature.

Before addressing the reasonableness and necessity of the Pension Act provisions, we must first examine the various policy aims that led to its enactment. *United States Trust Co. of New York v. New Jersey, supra* at 52 L.Ed.2d 112. When plants shut down, employees lose both their jobs and, in many cases, their pension rights. Accumulated pension credits may

[5] The contracts allegedly impaired by the Minnesota Pension Act are: (1) the employment agreements entered into by Allied and its employees, and (2) the trust agreement between Allied and the trustee of its pension plan. The terms of the employment agreements included wage rates, working conditions and fringe benefits, one of which was a pension plan with vesting to occur after twenty years. The Pension Act allegedly impairs those agreements in that it requires vesting of pension benefits after ten years if Allied ceases to do business or substantially reduces its work force in Minnesota. The terms of the trust agreement require payment by Allied in accord with actuarial projections which are predicated on vesting after twenty years. The Pension Act allegedly impairs that agreement because Allied must incur additional expense to provide benefits for persons whose benefits would be forfeited by plant closure.

be forfeited even when terminated employees are within a few months of qualifying for retirement. Bernstein, *Employee Pension Rights When Plants Shut Down: Problems and Some Proposals*, 76 Harv.L.Rev. 952 (1962) (hereinafter Bernstein). The loss sustained by separated employees can be viewed either as a future loss of retirement income or as a present loss of compensation corresponding to the amount of employee contributions on their behalf.

Certainly, the State of Minnesota has a strong and legitimate interest in protecting the economic welfare of its senior citizens by assuring the receipt of earned pension benefits as a form of retirement income. The forfeiture of anticipated retirement income is particularly hazardous because it affects individuals at an age when they often have no other source of substantial income.[6] Mass forfeiture of retirement benefits is likely to adversely affect the employees' immediate economic community through the loss of buying power and increased demand for welfare funds and related services.[7]

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[6] The three major sources of income for those of retirement age are private pensions, social security benefits and private savings. *See* C. Siegfried, *"The Role of Private Pensions" in Private Pensions and the Public Interest* 7, 9 (1970). While social security benefits are available to a wide segment of the elderly population, those benefits by themselves seldom provide sufficient income to meet ever-increasing costs of living. *See, e.g.*, R. Nader and K. Blackwell, *You and Your Pension* 13 (1973). And it is widely acknowledged that few individuals are able to accumulate sufficient savings through their working years to provide significant income after retirement. *See generally* M. Bernstein, *The Future of Private Pensions* 155-157 (1964).

[7] Congress explicitly recognized the same concerns during hearings on the bills that were eventually enacted into law as ERISA:

> One of the most important matters of public policy facing the nation today is how to assure that individuals who have spent their careers in useful and socially productive work will have adequate incomes to meet their needs when they retire.

S. Rep. No. 93-383, 93rd Cong., 2d Sess. (1974); Pension Reform Act, 8A *U.S. Code Cong. and Adm. News* 508, 516 (1974); H.R. Rep. No. 93-807, 93rd Cong., 2d Sess. (1974), Pension Reform Act, 8A *U.S. Code Cong. and Adm. News* 288, 294 (1974).

But, in our judgment, the loss of retirement income is only one aspect of the problem. Pension plans are usually instituted as a means of attracting and holding employees. Bernstein, *supra* at 964. Individuals who decide to work for an employer who offers a pension plan over an employer who does not, choose, in essence, to sacrifice the higher salary the non-plan employer may pay for the security of retirement income. Employer contributions to pension funds must be recognized as a substitute for present compensation. As one authority explains,

> Unions and employers are often quite specific in equating employer pension plan contributions with employee wage compensation. Unions demand increases of X cents per hour in money wages and Y cents per hour in fringe benefits, including pension plan contributions. Employers respond with counter-offers in precisely the same terms.
> * * * *
>
> The basic purposes of nonbargained plans are the same as those of bargained plans. As far as employees are concerned the purposes of the plan are to provide income when age forces retirement from employment. * * * Thus, as a general proposition, nonbargained plans seem no less a part of employee compensation than bargained plans.

Since the *Inland Steel*[8] case the courts and the National Labor Relations Board have held pension plans to be "wages" and, in addition, "condition[s] of employment" under the Labor-Management Relations Act of 1947 and

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[8] *Inland Steel Co. v. N.L.R.B.*, 170 F.2d 247 (7th Cir. 1948), *cert. denied*, 336 U.S. 960, *cert. granted on other grounds and aff'd*, 338 U.S. 382 (1949).

> its predecessor, the Wagner Act. * * * The demand to bargain [in *Inland Steel*] did not turn the contribution and the pension plan into "wages"; rather it was the nature of the inducement by the company to the employees and the value of the contributions and the benefits to the employees which made them "wages."

Bernstein, *supra* at 960-961.

Thus, the loss sustained by terminated employees has both present and future implications for the employees themselves and for their immediate community, we have no trouble concluding that the Minnesota legislature, in enacting the Pension Act, was addressing a problem of vital public interest.

The next area of inquiry is whether the terms of the Pension Act are reasonably adapted to and necessary for the accomplishment of these vital interests. We think they are. Allied contends that the provisions of the Act are neither reasonable nor necessary because: (1) the Act was designed to benefit only a limited class of persons, (2) the Act does not provide for a grace period during which an employer whose pension plan was not fully funded might reach full funding, and (3) the Act does not permit employers to voluntarily terminate their pension plans.

Admittedly, the Pension Act does not address all the problems existing in private pension programs. The Act prevents only the forfeiture of accumulated pension benefits by substantial numbers of employees when that forfeiture is caused by plant closure. It is well established, however, that in exercising its police powers, a state need not address all aspects of a particular problem. As observed by the Supreme Court in an analogous police power decision,

> [i]n establishing a system of unemployment benefits the

> legislature is not bound to occupy the whole field. It may strike at the evil where it is most felt.

Carmichael v. Southern Coal & Coke Co., 301 U.S. 495, 519-520 (1937) (citations omitted).

It seems clear that the problem of plant closure and pension plan termination was brought to the attention of the Minnesota legislature when the Minneapolis-Moline Division of White Motor Corporation closed one of its Minnesota plants and attempted to terminate its pension plan. However, Allied's contention that the Pension Act as aimed solely at White Motor retirees is totally unfounded. There is absolutely no evidence from the legislative history or debates on the Pension Act to support Allied's claim that the Act was aimed solely at White Motor Corporation.

Allied's other contentions that a grace period was not allowed and that there was no option to voluntarily terminate its plan can be answered quite simply. Undoubtedly, the Minnesota legislature rejected both of these alternatives because either would have been inconsistent with the Act's central purpose—to assure some measure of retirement income to those affected by present plan closures and plan terminations. Although the legislature might have adopted a less drastic means to accomplish its purpose, the approach it chose is not unreasonable or arbitrary merely because it requires funding to commence from the date of enactment.

IV. *The Commerce Clause Challenge.*

Allied claims that interstate commerce is unreasonably burdened because the Pension Act's funding charge discourages Minnesota employers from terminating their operations in this state and moving them or their investment capital elsewhere. Relying on *Pike v. Bruce Church, Inc.*, 397 U.S. 137 (1970), Allied argues that the Pension Act, in effect, requires

business operations to be performed in the home state when those operations could be more efficiently performed in another. *Id.* at 145. In *Pike*, the Supreme Court set forth the standard for determining whether state legislation unduly burdens interstate commerce:

> Although the criteria for determining the validity of state statutes affecting interstate commerce have been variously stated, the general rule that emerges can be phrased as follows: Where the statute regulates even-handedly to effectuate a legitimate local public interest, and its effects on interstate commerce are only incidental, it will be upheld unless the burden imposed on such commerce is clearly excessive in relation to the putative local benefits. Huron Cement Co. v. Detroit, 362 U.S. 440, 443. If a legitimate local purpose is found, then the question becomes one of degree. And the extent of the burden that will be tolerated will of course depend on the nature of the local interest involved, and on whether it could be promoted as well with a lesser impact on interstate activities.

Id. at 142 (citation omitted).

It is clear from the statutory language of the Pension Act that local and interstate commerce are treated alike. Any employer of 100 or more employees who terminates a pension plan or ceases operations in the state is affected by the Act. *See* Minn. Stat. §§181B.02, subd. 2, 181B.03-06. As held above, the Act clearly effectuates a vital and legitimate policy of local interest. Thus, the question becomes whether the burden imposed on interstate commerce is excessive in relation to that legitimate local benefit. We do not think it is excessive.

The Pension Act burdens commerce in much the same way as other forms of employer protection legislation; the costs of doing business in Minnesota are increased to further an important state policy. Costs of a similar nature are imposed by workmen's compensation, unemployment compensation and social security statutes and each has been unheld against constitutional attack. *See Helvering v. Davis*, 301 U.S. 619 (1937) (social security); *Carmichael v. Southern Coal and Coke Co.*, 301 U.S. 219 (1937) (unemployment compensation); *Mountain Timber Co. v. Washington*, 243 U.S. 219 (1917) (workmen's compensation). The local policy effectuated by the Pension Act is equal in importance to aims achieved by the preceding legislation. In our judgment, this vital interest outweighs the attendant burdens on interstate commerce.[9]

V. *The Due Process Challenge.*

Allied asserts that the Pension Act violates the Due Process Clause of the Fourteenth Amendment by divesting Allied of property rights—the right to withhold pension benefits for failure to meet age and service requirements it had contracted for prior to the Act's passage. The considerations involved in Allied's due process challenge are substantially the same as

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[9] Two recent Supreme Court cases sustaining Commerce Clause attacks on state legislation do not compel a contrary result. Both involved state interests of considerably less importance. In *Great Atlantic and Pacific Tea Co. v. Cottrell*, 424 U.S. 366 (1976), the State of Mississippi claimed that a regulation allowing the sale of outstate milk products in Mississippi only if the selling state accepted Mississippi milk products on a reciprocal basis was enacted to maintain state health standards. The Court regarded this purported justification as "border[ing] on the frivolous." *Id.* at 375. In *Pike v. Bruce Church, Inc.*, 397 U.S. 137 (1970), an Arizona statute required cantaloupes grown in the state to be packed in conformity with certain standards and approved by a state supervisor. The practical effect of the statute was to compel an Arizona grower, with adequate packing facilities thirty-one miles away in California, to build similar facilities in Arizona. *Id.* at 140. The purpose of the statute was simply "to protect and enhance the reputation of growers within the State." *Id.* at 143. The Court held, "such an incidental consequence of a regulatory scheme could perhaps be tolerated if a more compelling state interest were involved. But here the State's interest is minimal at best. * * *" *Id.* at 146.

those previously considered under the Contract Clause. We have held that the Pension Act is a valid exercise of the state's police power aimed at protecting an important and legitimate interest of certain state residents. For that reason, we need only address here those arguments peculiar to Allied's due process challenge: namely, whether the Pension Act is retroactive in application and, if so, whether that retroactivity violates the Due Process Clause.

Allied argues that the Pension Act's funding charge is based on pension benefits earned prior to enactment of the legislation. It is true that the Act does look to service performed prior to enactment to determine the amount of accumulated benefits, but the events which trigger the funding charge all occur after the effective date of the Act, April 10, 1974. Thus, the Act is directed only at forfeitures which arise from plant closures occurring after April 10. *Accord, Willys Motors v. Northwest Kaiser-Willys*, 142 F.Supp. 469 (D. Minn. 1956). Allied closed its Minnesota plant on July 31, 1974, over three months after the effective date of the Pension Act.

Even if we found the Act to operate retroactively, that alone does not render a statute invalid. It is well settled that legislation aimed at a legitimate local interest may be valid irrespective of any retroactivity. *See, e.g., Usery v. Turner Elkorn Mining Co.*, —— U.S. ——, 49 L.Ed.2d 752 (1976); *Goldblatt v. Town of Hempstead*, 369 U.S. 590 (1962). The Supreme Court set forth the relevant test for determining whether retroactive legislation is valid as an exercise of the state's police power in *Goldblatt v. Town of Hempstead, supra* at 594-595:

> To justify the state in * * * interposing its authority in behalf of the public, it must appear—first, that the interests of the public * * * require such interference; and, second, that the means are reasonably necessary for the accomplishment of the purpose, and not unduly oppressive upon individuals.

For the reasons stated above, we believe the Pension Act accomplishes a vital public interest, is reasonably adapted to that end and is not unduly oppressive in its impact on Allied. It is valid therefore, irrespective of any alleged retroactive effect.

VI. *The Equal Protection Challenge.*

Allied commences its equal protection challenge with the claim that in recent years, the "rational basis" standard for determining the validity of state statutes has been replaced by a new test which requires that the classification bear a substantial and significant relation to its claimed objective. *Women's Liberation Union of Rhode Island, Inc. v. Israel*, 379 F.Supp. 44, 49-50 (D. R.I. 1974), *aff'd*, 512 F.2d 106 (1st Cir. 1975). *See Dorrough v. Estelle*, 497 F.2d 1007, 1011 (5th Cir. 1974); *Lucas v. Secretary, Dept. of HEW*, 390 F.Supp. 1310 (D. R.I. 1975). A close examination of these decisions reveals that the emerging middle standard of review, somewhere between the rational basis test and strict judicial scrutiny, has been applied to classifications falling just short of the "suspect classification" category or of infringing fundamental rights.[10] Recent decisions of the Supreme Court demonstrate unequivocally that where business or economic regulation is at issue and no potentially suspect classification is involved,

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[10] In *Dorrough v. Estelle*, 497 F.2d 1007 (5th Cir. 1974), the emerging middle standard was applied to the classifications in a Texas statute denying a criminal appeal to certain classes of criminal escapees. A Rhode Island statute excluding women from certain types of bars was more carefully examined by the court in *Women's Liberation Union of Rhode Island, Inc. v. Israel*, 379 F.Supp. 44 (D. R.I. 1974), *aff'd*, 512 F.2d 106 (1st Cir. 1975). Finally, in *Lucas v. Secretary, Dept. of HEW*, 390 F.Supp. 1310 (D. R.I. 1975), the court followed the standard applied in *Women's Liberation Union of Rhode Island, Inc. v. Israel, supra*, to strike down distinctions drawn between legitimate and illegitimate children.

the traditional rational basis standard still applies. *City of New Orleans v. Dukes*, —— U.S. ——, 49 L.Ed.2d 511 (1976); *Borass v. Village of Belle Terre*, 416 U.S. 1 (1974). Thus, because Allied challenges local economic regulation, we must give considerable deference to the classifications chosen by the legislature and uphold those classifications "if any state of facts reasonably may be conceived to justify [them]." *McGowan v. Maryland*, 366 U.S. 420, 426 (1961); *Lindsley v. Natural Carbonic Gas Co.*, 220 U.S. 61, 78 (1911).

The first set of challenged classifications are readily justified under the relevant standard. They are:

1) the Act's regulation of employers with more than 100 employees while failing to cover smaller employers; and
2) the Act's exclusion of state and local government employees and employees of tax-exempt organizations.

In our judgment, these exclusions are based on rational policy aims. First, national and statewide experience indicated that plan terminations by major private businesses caused hardship to the greatest number of aged citizens and imposed the most severe burden on states to remedy those hardships through public assistance. Certainly, it was not unreasonable for the legislature to fashion a remedy appropriate to the most immediate need. Similarly, tax-exempt organizations and state and local government employers were excluded because the legislature determined the need for protection was greatest in private industry of substantial size. ERISA excludes tax-exempt and public employees for the same reason. 29 U.S.C. §1003 (b) (1), (2).

Allied also attacks the exclusion of employers who have made the maximum allowable contribution deductible under §404 of the Internal Revenue Code for a designated sum of years preceding termination. This exclusion is justifiable on

the ground that one of the Pension Act's obvious purposes is to encourage employers to fund their plan to the maximum extent possible. It seems perfectly reasonable to exclude those employers who have attempted to maintain a relatively high funding level. The maximum deductible contribution was simply taken as a readily identifiable bench mark for separating out plans more likely to be adequately funded.

Finally, Allied challenges the Pension Act's exclusion of "non-qualified" plans under §401 of the Internal Revenue Code. The defendants argue that this classification was drawn to reduce the coverage of the Act to make it administratively manageable. While we have some doubts about this rationale, there is justification for assuring that state resources allocated to policing the Act are kept within manageable limits. *See Mathews v. Lucas*, —— U.S. ——, 49 L.Ed.2d 651 (1976).

For these reasons, we find no violation of the equal protection clause.

In accord with the preceding discussion, the Pension Act is sustained against each constitutional challenge.

This Memorandum Opinion constitutes the Court's findings of fact and conclusions of law. Judgment will be entered in favor of defendants Warren Spannaus, E. I. Malone, Phyllis Speilman and against Allied Structural Steel Company Salaried Employees' Pension Plan. Costs and disbursements will be taxed to the plaintiffs.

GERALD W. HEANEY
United States Circuit Judge
EDWARD J. DEVITT
Chief Judge
United States District Court
DONALD D. ALSOP
United States District Judge

Dated: September 2, 1977

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
THIRD DIVISION

No. 3-75 Civ. 178

WALTER J. FLECK, EDYTH A. HAMLER,
E. A. RICHERT, as Fiduciary of the
Allied Structural Steel Company Salaried
Employees' Pension Plan, and
ALLIED STRUCTURAL STEEL COMPANY,
a Delaware corporation,

Plaintiffs,

v.

WARREN SPANNAUS, E. I. MALONE,
PHYLLIS SPEILMAN and ALLIED STRUCTURAL
STEEL COMPANY SALARIED EMPLOYEES'
PENSION PLAN,

Defendants.

Before HEANEY, Circuit Judge, and DEVITT and ALSOP, District Judges.

ORDER

The unpublished Memorandum Opinion in the above styled case, filed September 2, 1977, is amended as follows:

ON PAGE 17, LAST PARAGRAPH: Delete from the end of the second sentence the words "Salaried Employees' Pension Plan". The sentence should now read: "Judgment will be entered in favor of defendants Warren Spannaus, E. I. Malone, Phyllis Speilman and against Allied Structural Steel Company."

The Clerk of Court is directed to enter a revised judgment accordingly.

GERALD W. HEANEY
United States Circuit Judge
EDWARD J. DEVITT
Chief Judge
United States District Court
DONALD D. ALSOP
United States District Judge

Dated: September 22, 1977

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
THIRD DIVISION

No. Civ. 3-75-178

WALTER J. FLECK, EDYTH A. HAMLER,
E. A. RICHERT, as Fiduciary of the
Allied Structural Steel Company Salaried
Employees' Pension Plan and
ALLIED STRUCTURAL STEEL COMPANY,
a Delaware corporation,

Plaintiff,

vs.

WARREN SPANNAUS, E. I. MALONE,
PHYLLIS SPEILMAN and ALLIED STRUCTURAL
STEEL COMPANY SALARIED EMPLOYEES'
PENSION PLAN,

Defendant.

You are hereby notified that in the above entitled case on the 22nd day of September, 1977, filed and entered Order (Heaney, Devitt and Alsop—9-22-77) that the unpublished

Memorandum Opinion in above stylted case, filed Sept. 2, 1977 is amended as follows:

On Page 17, Last Paragraph: Delete from the end of the second sentence the words "Salaried Employes' Pension Plan". The sentence should now read: "Judgment will be entered in favor of defendants Warren Spannaus, E. I. Malone, Phyllis Speilman and against Allied Structural Steel Company". The Clerk of Court is directed to enter a revised judgment accordingly.

HARRY A. SIEBEN, Clerk
By Bernadine L. Brown
Deputy Clerk

JUDGMENT filed and entered.

TO: Dennis J. Carlin
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UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
THIRD DIVISION

No. 3-75 Civ. 178

(Title of case omitted in printing)

NOTICE OF APPEAL TO THE
UNITED STATES SUPREME COURT

To: Defendants and their attorney, Kent G. Harbison, Special Assistant Attorney General, 515 Transportation Building, St. Paul, Minnesota 55155

Notice is hereby given that Walter J. Fleck, Edythe A. Hamler, E. A. Richert, and Allied Structural Steel Company, the plaintiffs above named, hereby appeal to the Supreme Court of the United States, pursuant to 28 U.S.C. § 1253, from the final judgment entered in this action on September 2, 1977, and the revised final judgment entered on September 22, 1977.

Dated: September 27, 1977.

BRIGGS AND MORGAN
By John R. Kenefick
W-2200 First National Bank
Building
St. Paul, Minn. 55101
(612) 291-1215
Attorneys for Plaintiffs

[Affidavit of service omitted in printing]

CHAPTER 181B
PRIVATE PENSION BENEFITS PROTECTION

181B.01 CITATION. Sections 181B.01 to 181B.17 shall be known and may be cited as the "private pension benefits protection act".

181B.02 DEFINITIONS. Subdivision 1. As used in sections 181B.01 to 181B.17, the following terms shall have the meanings given.

Subd. 2. "Employer" means any person, firm or corporation who employs 100 or more people at least one of whom is employed in this state at any time within one year prior to the date that it ceases to operate a place of employment or a pension plan or such longer period as may be prescribed by the commissioner pursuant to section 181B.14.

Subd. 3. "Place of employment" means any location within this state at which an employer employs any employees at any time within one year prior to the date that the employer ceases to operate at such location or such longer period as may be prescribed by the commissioner pursuant to section 181B.14.

Subd. 4. "Employee" means any person employed at the place of employment at any time within one year prior to the date when the employer ceases to operate the place of employment or a pension plan or such longer period as may be prescribed by the commissioner pursuant to section 181B.14. "Employee" also means any person who is not employed by the employer but who was formerly employed in this state, and is eligible or will be eligible without the earning of additional pension credits to receive a pension benefit from the employer's pension plan.

Subd. 5. "Commissioner" means the commissioner of labor and industry.

Subd. 6. "Ceases to operate a place of employment or a pension plan" means:

(a) The complete termination of operations at a place of employment, or

(b) A substantial reduction in the number of employees at a place of employment, or

(c) The termination or substantial reduction of pension plan operations or benefits for all or a portion of an employer's employees.

The term shall not mean any temporary cessation of operations or reduction of employees. Neither shall the term mean any cessation of operations by a single employer who participates in a pension plan to which more than one employer makes contributions if such cessation does not also entail the termination of the master pension plan. In determining whether any reduction has been substantial the commissioner shall take into consideration not only the absolute size of the reduction but the relative size of the reduction as it relates to the corporate and employment history of the group or subgroup suffering the reduction. In addition, the commissioner may find that a number of unsubstantial reductions are, for the purposes of sections 181B.01 to 181B.17, equivalent to a substantial reduction. When an employer ceases to operate a place of employment or a pension plan but offers to retain without loss of pension credit all of the employees in comparable jobs with equal or increased compensation at another location within the state or at some other location outside this state as specified in any voluntary agreement authorized by section 181B.10, sections 181B.01 to 181B.17 shall not apply except as it affects persons not employed by the employer but who are eligible or will be eligible without the earning of additional pension credits to receive the pension benefits from the employer's pension plan.

Subd. 7. "Pension plan" means any plan, fund or program which is established, maintained or entered into by an employer for the purpose of providing retirement benefits for its employees, or their beneficiaries and which is designated as a qualified pension plan under section 401 of the United States Internal Revenue Code of 1954 as amended, but does not mean any plan established by collective bargaining agreement which is excluded from the covereage of 29 U.S.C. 186(c)(5) (B) by 29 U.S.C. 186(g) and for which the employer has no administrative responsibility and no responsibility for the establishment of the retirement benefit schedule. Sections 181B.01 to 181B.17 shall not apply to any retirement fund or program providing benefits only for public employees of the federal government or the state government or a subdivision of the state, nor shall it apply to any pension plan established on behalf of a religious, charitable, or educational organization as defined by Section 501(c) (3) of the United States Internal Revenue Code of 1954 as amended. Further, sections 181B.01 to 181B.17 shall not apply to any money purchase, profit sharing, or stock bonus plan in which no definitely determinable level of benefits is stipulated to be given to qualified plan participants at normal retirement age or some other age.

Subd. 8. "Normal retirement benefit" means that benefit payable under a pension plan in the event of retirement at the normal retirement age.

Subd. 9. "Normal retirement age" means the lesser of either the normal retirement age as prescribed by the pension plan or age 65.

Subd. 10. "Accrued portion of the normal retirement benefit" with respect to employees of ten or more years of covered service means the larger of either the present value of the pen-

sion benefit which the employee has earned prior to cessation under the terms of the pension plan itself or the present value of the normal retirement benefit to which the employee would be entitled under the plan as in effect on the date of the cessation if he continued to earn pension credits based on the covered service he would have accumulated had he continued as a plan participant until normal retirement age or if he continued to earn annually until normal retirement age the same rate of compensation as that which he had been earning prior to cessation, upon which his pension credit would have been computed under the plan at the rate specified by the plan for the years subsequent to the cessation, multiplied by a fraction not to exceed one, the numerator of which is the total number of his years of covered service as of the date of cessation, and the denominator of which is the total number of years he would have had in covered service in such plan as of normal retirement age if he had continued to be an active participant in the plan until attaining such age.

With respect to employees with less than ten years of covered service, the defining term means the present value of the total amount of pension benefits which have been vested on or prior to the date of cessation. Where the above formulas are inapplicable or inequitable the defined term means that portion of the normal retirement benefit to which the commissioner determines actuarially the employee should be entitled based on the covered service of the employee, as of the date of the cessation.

Subd. 11. "Covered service" means the longer of either:

(a) The period of employment with an employer including predecessor employers as allowed in section 181B.07, clause (1) which is recognized under the terms of the employer's pension plan for the purposes of determining either

an employee's eligibility to receive benefits under the plan or the amount of such benefits, or

(b) The amount of time after institution of the present pension plan or any substantially similar predecessor plan that an employee has been continuously employed in a full time capacity by an employer including predecessor employers as allowed in section 181B.07, clause (1) prior to the cessation of operations. Temporary and seasonal layoffs and unpaid vacations and leaves of absence need not be credited as covered service but neither shall they serve to interrupt an employee's continuity of service. Part time employment may be credited as covered service if the commissioner determines that a previous full time employee has been reduced to part time status as part of a plan to evade provisions of sections 181B.01 to 181B.17.

Subd. 12. "Vested right" means a legal right obtained by an employee participating in a pension plan to that part of an immediate or deferred pension benefit which arises from the employee's covered service under the plan and is no longer contingent on the employee remaining covered under the plan.

Subd. 13. "Vested pension benefit" means that accrued portion of the normal retirement benefit of an employee participating, or who has participated, in a pension plan to which the employee has a vested right.

Subd. 14. "Nonvested pension benefit" means the accrued portion of the normal retirement benefit of an employee participating in a pension plan to which the employee does not have a vested right.

Subd. 15. "Present value of the total amount of nonvested pension benefits" means that sum of money which if earning interest in a secure investment from the date of the cessation of operations onward would equal the value of the

nonvested pension benefit on the date on which the plan participant reached normal retirement age.

Subd. 16. "Present value of the total amount of vested pension benefits" means that sum of money which if earning interest in a secure investment from the date of cessation of operations onward would equal the value of the vested pension benefit on the date on which the plan participant reached normal retirement age minus that sum of money which is set aside in trust or exclusively reserved to finance pension benefits for plan participants.

Subd. 17. "Present value of the normal retirement benefit" means that sum of money which if earning interest in a secure investment from the date of the cessation of operations onward would equal the value of the normal retirement benefit on the date on which the plan participant reached normal retirement age.

181B.03 PENSION REFUNDING CHARGE, VESTED BENEFITS PRIOR TO PENSION BENEFITS PROTECTION ACT. Every employer who hereafter ceases to operate a place of employment or a pension plan within this state shall owe to his employees covered by sections 181B.01 to 181B.17 a pension funding charge which shall be equal to the present value of the total amount of vested pension benefits based upon covered service occurring before April 10, 1974 of such employees of the employer who have completed ten or more years of any covered service under the pension plan of the employer and whose vested pension benefits have been or will be forfeited because of the employer's ceasing to operate a place of employment or a pension plan, less the amount of such vested pension benefits which are compromised or settled to the satisfaction of the commissioner as provided in sections 181B.01 to 181B.17.

181B.04 NONVESTED BENEFITS PRIOR TO ACT. Every employer who hereafter ceases to operate a place of employment or a pension plan within this state shall owe to his employees covered by sections 181B.01 to 181B.17 a pension funding charge which shall be equal to the present value of the total amount of nonvested pension benefits based upon service occurring before April 10, 1974 of such employees of the employer who have completed ten or more years of any covered service under the pension plan of the employer and whose nonvested pension benefits have been or will be forfeited because of the employer's ceasing to operate a place of employment or a pension plan, less the amount of such nonvested pension benefits which are compromised or settled to the satisfaction of the commissioner as provided in sections 181B.01 to 181B.17.

181B.05 VESTED BENEFITS UNDER ACT. Every employer who hereafter ceases to operate a place of employment or a pension plan within this state shall owe to his employees covered by sections 181B.01 to 181B.17 a pension funding charge which shall be equal to the present value of the total amount of vested pension benefits based upon covered service occurring after April 10, 1974 of such employees of the employer who have completed ten or more years of any covered service under the pension plan of the employer and whose vested pension benefits have been or will be forfeited because of the employer's ceasing to operate a place of employment or a pension plan, less the amount of such vested pension benefits which are compromised or settled to the satisfaction of the commissioner as provided in sections 181B.01 to 181B.17.

181B.06 NONVESTED BENEFITS UNDER ACT. Every employer who hereafter ceases to operate a place of employment or a pension plan within this state shall owe to his employees covered by sections 181B.01 to 181B.17 a pension funding charge which shall be equal to the present value of the total amount of nonvested pension benefits based upon covered service occurring after April 10, 1974, of such employees of the employer who have completed ten or more years of any covered service under the pension plan of the employer and whose nonvested pension benefits have been or will be forfeited because of the employer's ceasing to operate a place of employment or a pension plan, less the amount of such nonvested pension benefits which are compromised or settled to the satisfaction of the commissioner as provided in sections 181B.01 to 181B.17.

181B.07 EXCEPTIONS TO PENSION FUNDING REQUIREMENTS. An employer shall not be liable for any pension funding charge under sections 181B.03 to 181B.06 when (1) the employer ceases to operate a place of employment or a pension plan as a result of merger, consolidation, or acquisition of assets, if the successor to the employer continues the pension plan of the employer or establishes a comparable pension plan which covers all previously covered employees of the employer with no reduction in credited covered service for purposes of sections 181B.01 to 181B.17 and no reduction in the value of the pension credits already earned by the employees; or (2) the employer ceasing to operate a place of employment or a pension plan has (a) in each of the five years prior to cessation made a contribution to the pension plan at least equal to the maximum contribution which would have been exempt from income taxation under Section 404 of the United States Internal Revenue Code of 1954 as amended, or (b) in at least eight of the ten years immediately prior to

cessation made a contribution to the pension plan at least equal to the maximum contribution which would have been exempt from income taxation under Section 404 of the United States Internal Revenue Code of 1954 as amended, or (c) when the pension plan has been instituted less than five years prior to cessation, in every year since the institution of the plan, made a contribution to the pension plan at least equal to the maximum contribution which would have been exempt from income taxation under Section 404 of the United States Internal Revenue Code of 1954 as amended.

181B.08 NOTICE OF INTENTION TO CEASE OPERATIONS. Any employer who intends to cease to operate a place of employment or a pension plan within this state shall notify the commissioner of such intention not later than six months prior to the date the employer intends to cease such operation. In the case of an employer who intends to cease to operate a place of employment or a pension plan within this state within six months of April 10, 1974, the notice required by this section shall be given by the employer as soon as practicable, but not later than ten days after April 10, 1974.

181B.09 INVESTIGATION BY COMMISSIONER. Upon receipt of such notification, or upon his own initiative when such notification is not given as required, the commissioner shall cause an investigation to be made of the employer to determine the number of employees who have completed ten or more years of covered service under the pension plan of the employer and whose nonvested or vested pension benefits have been or will be forfeited by such cessation, the number of employees whose vested pension benefits have been or will be forfeited by such cessation, the amounts of such nonvested or vested pension benefits, if any, of such employees, and any other facts or circumstances concerning the employer, his employees and the pension plan for such employees as may be

necessary or useful to the commissioner to carry out his duties and responsibilities under sections 181B.01 to 181B.17. The investigation, insofar as practicable, shall be conducted at the employer's place of business during normal business hours. The employer shall cooperate fully with the commissioner in such investigation, and shall make available to him any books, records or other information necessary or useful to such investigation. To aid in such investigations, the commissioner is authorized to administer oaths and affirmations and to issue subpoenas to compel the attendance of witnesses or the production of books, records or other documents. The commissioner may seek, through the attorney general acting on his behalf, orders from any court of competent jurisdiction to compel an employer to comply with the provisions of sections 181B.01 to 181B.17 and to punish disobedience of any subpoena issued pursuant to sections 181B.01 to 181B.17.

181B.10 DETERMINATION OF AMOUNT OF BENEFITS; AGREEMENTS AS TO BENEFITS. As part of the investigation of an employer, the commissioner shall determine the amount of nonvested and vested pension benefits which have been compromised or settled to his satisfaction. Nonvested and vested pension benefits may be compromised or settled by voluntary agreement between the employer and individual employees which is mutually understood by both parties to be a complete and final satisfaction of the employer's obligations regarding such benefits, provided that both parties are made fully aware of their rights and obligations under sections 181B.01 to 181B.17 prior to the making of such voluntary agreement. Before any such settlement can be made it must be approved by the commissioner. The commissioner shall not approve any settlement that is not fair and equitable. Further, for all settlements entered into by the employer the relationship between the present value of the com-

promised pension credits and the value of the settlement must be as constant as is practicable.

181B.11 CERTIFICATION OF AMOUNTS AVAILABLE. After the investigation of the employer the commissioner shall certify to the employer the present value of the total amount of nonvested and vested pension benefits which are includable in determining an employer's pension funding charge liability under sections 181B.01 to 181B.17 and the amount of such benefits which have been compromised or settled to the satisfaction of the commissioner. When the assets of an employer available for distribution under sections 181B.01 to 181B.17 are less than the sum total of the pension funding charges owed to employees as calculated by the commissioner, the commissioner shall calculate the proportion of available assets owed to each employee so that the actual amount to be received by any covered employee at normal retirement age divided by the amount that employee would have received at normal retirement age had there been no shortage of assets available for distribution under sections 181B.01 to 181B.17 is a ratio as constant as is possible from employee to employee. In seeking to keep such ratio constant the commissioner shall consider the amounts to be received by an employee from trust fund assets set aside for employee pension benefits but unavailable for distribution under sections 181B.-01 to 181B.17. The amount certified by the commissioner shall be due and payable to the employees in the manner specified in section 181B.12 on the date that the employer ceases to operate its place of employment or a pension plan and shall be a lien upon the employer's assets. If the pension funding charge is not paid when due, the employer shall be liable for interest on the amount due at the rate of eight percent per annum until the charge and interest are paid, and the attorney general of this state shall bring action in an appropriate district court of this state or in the courts of another state or in an appropriate federal court as provided for in section 181B.13.

181B.12 PURCHASE OF PREPAID DEFERRED ANNUITY. The amount certified by the commissioner as due and payable to the employees shall be paid to the employees by the employer through the purchase of a prepaid deferred annuity payable to the employee when he reaches normal retirement age or to his beneficiary upon the employee's death. Such purchase shall be made through a trust authorized by the United States Internal Revenue Service to make such purchases in a manner which exempts from federal income taxation the money used to purchase the annuity and all income earned by such annuity up to the date of the distribution of the annuity amount. In no event shall the amount of annuity to be distributed at normal retirement age exceed the amount of the accrued normal retirement benefit.

181B.13 RECOVERY OF AMOUNTS DUE. The commissioner shall maintain a separate record of each employee owed a pension funding charge under sections 181B.01 to 181B.17. Ten days after any pension funding charge is due the commissioner shall tabulate all unpaid amounts and certify that figure to the attorney general who shall immediately take appropriate legal action as authorized in section 181B.11 on behalf of all aggrieved employees in a class action suit.

181B.14 ACTS CONSTITUTING TERMINATION. For the purposes of sections 181B.01 to 181B.17, the employment of any employee involuntarily terminated within one year of the date an employer ceases to operate a place of employment or a pension plan within this state, or within such longer period as prescribed by the commissioner when he determines that an employer is attempting to evade the provisions of sections 181B.01 to 181B.17, shall be deemed to have been termi-

nated because of the employer's ceasing to operate its place of employment or a pension plan, unless the employer can conclusively show that the termination was attributable to some other cause.

181B.15 RULES AND REGULATIONS. The commissioner may promulgate rules and regulations to provide for the efficient administration of the provisions of sections 181B.01 to 181B.17, or to clarify such provisions as may be necessary to effectuate the purposes of sections 181B.01 to 181B.17, and may from time to time specify any appropriate actuarial assumptions necessary to effectuate the purposes of sections 181B.01 to 181B.17.

181B.16 PROTECTION OF FUNDS FROM EXECUTION OR PROCESS. The funds of any employer which are set aside or reserved for benefits under a pension plan of the employer to which employees have a vested right shall not be liable to levy or attachment by virtue of any execution or civil process whatever, issued out of any court of this state, for the collection of the pension funding charge imposed by sections 181B.01 to 181B.17.

181B.17 EFFECTIVE DATE; EFFECT OF FEDERAL ACT IN AREA. Sections 181B.01 to 181B.17 shall take effect the day following final passage. Provided that sections 181B.01 to 181B.17 shall become null and void upon the institution of a mandatory plan of termination insurance guaranteeing the payment of a substantial portion of an employee's vested pension benefits pursuant to any law of the United States.